

# 2016 Nuts & Bolts Seminar Johnston (Central Iowa)

## SCHEDULE – MONDAY, OCTOBER 20

- 8:00 - 8:30           **Registration**
- 8:30 - 9:30           **Iowa Trust Accounts 101**  
Speaker: N. Tre Critelli, Office of Professional Regulation
- 9:30 - 10:30          **Hanging Out Your Own Shingle**  
Speaker: Magdalena Reese, Cooper, Goedicklen, Reimer &  
Reese, P.C. and Tabitha Turner, Turner Law Firm PLLC
- 10:30 - 10:45       **Break**
- 10:45 - 11:30       **Employment Law 101**  
Speaker: Katie Graham, Nyemaster Goode, P.C.
- 11:30 - 12:30       **Lunch** (Not provided with registration)

## LITIGATION TRACK

- 12:30 - 1:30       **Summary Judgement and Trial Management Tips**  
Speaker: Kent Gummert, Ledderer, Weston, Craig, PLC
- 1:30 - 2:45       **Family Law 101**  
Speaker: Amy Skogerson, Skogerson Law PC and  
Andrea McGinn, McGinn Law, PLLC
- 2:45 - 4:00       **The Guilty Ones are Easy**  
Speaker: Marc Wallace, Assistant Public Defender
- 4:00 - 4:15       **Break**
- 4:15 - 5:00       **General Person Injury**  
Speaker: Nate Boulton, Hedberg & Boulton P.C.



## TRANSACTIONAL TRACK

- 12:30 - 1:30       **Business Formation: A Basic Understanding**  
Speaker: Rachel Parker, Nyemaster Goode, PC
- 1:30 - 2:45       **Real Estate 101**  
Speaker: Timothy Gartin, Hastings Gartin & Boettger LLP
- 2:45 - 3:45       **Estate Planning 101**  
Speaker: David Repp, Dickinson Mackaman Tyler & Hagen PC
- 3:45 - 4:00       **Break**
- 4:00 - 5:00       **Run Your Practice Like a Business and Soar**  
Speaker: Bob Clements, Benchmark Business Group



## CLE Hours

7 hours of state CLE which includes  
1 hour of ethics CLE.

Activity ID # 246035

## **Caveat**

*The printed materials contained in this book and the oral presentations of the speakers are not intended to be a definitive analysis of the subjects discussed. The reader is cautioned that neither the program participants nor The Iowa State Bar Association intends that reliance be placed upon these materials in advising your clients without confirming independent research.*



# 2016 Nuts & Bolts Seminar Johnston (Central Iowa)



## Trust Accounts 101

**8:30 a.m.-9:30 a.m.**

**Presented by**

N. Tre Critelli

Office of Professional Regulation

1111 East Court Ave

Des Moines, IA 50319



**THURSDAY, OCTOBER 20, 2016**

# SOWA TRUST ACCOUNTS

101

2016 Nuts & Bolts Seminar  
Des Moines October 20  
Coralville October 21

# Who We Are - Organization of the Office of Professional Regulation



## **Today's Topics**

- **The Importance of Properly Managing Client Monies**
- **Opening & Closing the Trust Account**
- **Basic Principles of Trust Account Management**
- **Specific Fee & Expense Issues**
- **Where to Find Information on Trust Account Management**

# What happens if someone files an ethics complaint against a lawyer?



# 2015 Attorney Disciplinary Board Complaint Demographics

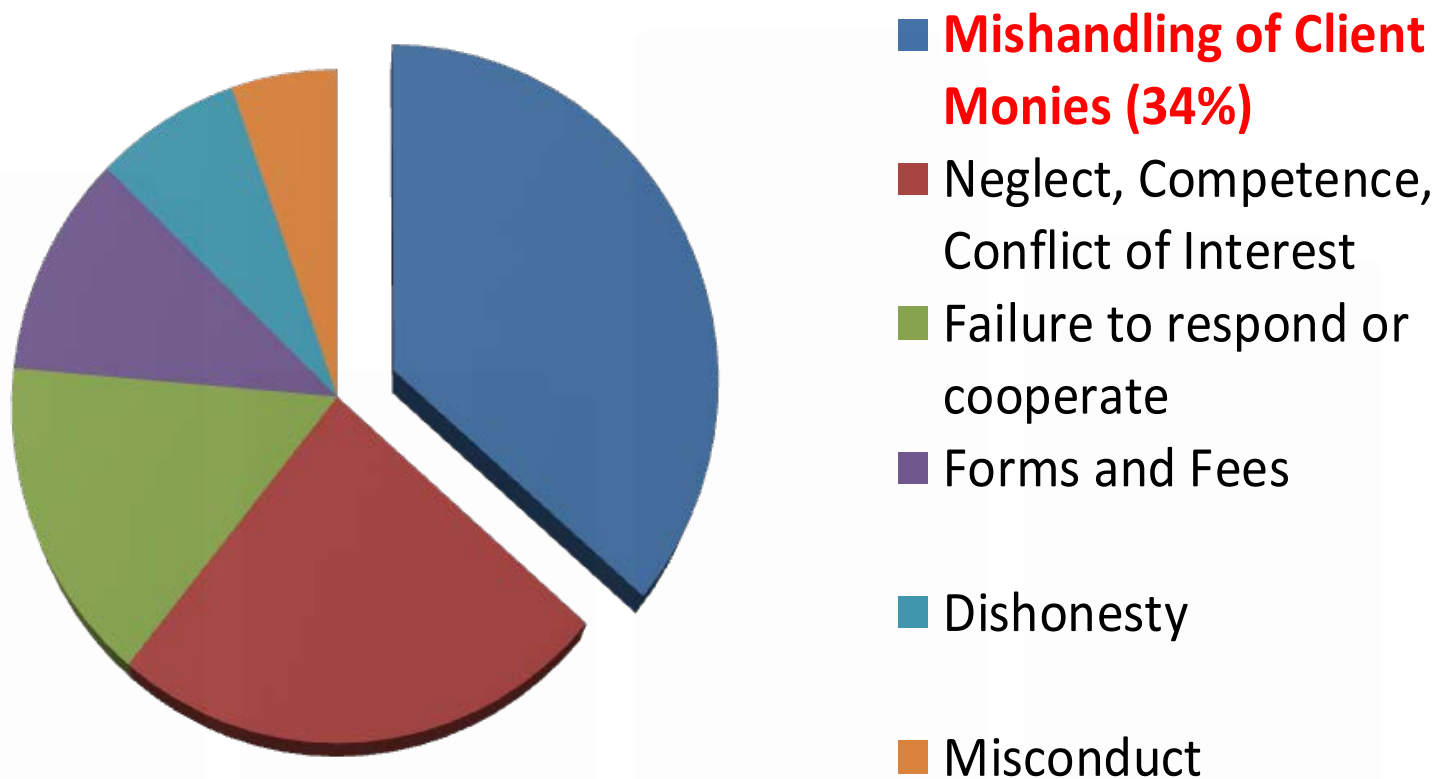
Most frequent ethics allegations :

- neglect or incompetence (44 %)
- misrepresentation or fraud (13 %)
- money, trust account issues (13 %)
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- excessive or unlawful fee (6 %)
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2015-2016

# Public Discipline Demographics



Iowa S. Ct. Case no. 15-0641

Sept. 4, 2015

*“The business side of a law practice may not be an area on which attorneys want to spend their time, but it safeguards important client interests and requires the same attention to detail as the entire practice of law.”*

# Trust Account Rules

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- Iowa Rule of Professional Conduct  
32:1.15
- Chapter 45 of Iowa Court Rules

# Iowa R. of Prof'l Conduct 32:1.15

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account. Other property shall be identified as such and appropriately safeguarded.

...

# *"Do I need a trust account?"*

- The answer for most attorneys is "yes"
- Pooled interest-bearing for deposits of nominal or short-term funds
- May need multiple trust accounts
  - Could the client's or third person's funds "generate positive net earnings"?
  - Client preference
  - Large balances

# Issues When Opening the Trust Account

- Bricks and mortar
- Institution type
- Account must be properly titled
- Deposits must be federally insured
- Service charges and fees?
- No overdraft protection or credit line
- Must supplement or amend your Client Security report

# Interest on your Trust Account

- Interest On Lawyer Trust Account (IOLTA) program
- IOLTA produces interest income from pooled trust accounts previously non-interest bearing
- Annual grants approved by Court support legal services to the poor, law-related education
- Historically receipts of over \$1 million annually have been distributed

# Authorized Signers

- ❑ **BEFORE:** only a lawyer admitted to the practice of law in Iowa *or* a person who is under the direct supervision of the lawyer
- ❑ **NOW:** as before + ability to designate successor attorney



# Signature Authority for Stand-by Lawyer

- Iowa rules formerly did not address stand-by signature authority
- New Rule 45.11 allows sole lawyer signatory to designate another Iowa lawyer as stand-by signatory
- Possible triggering events include death, disability, disappearance, abandonment of practice, incapacity, suspension, disbarment

# Non-lawyers as Authorized Signers

- ❑ The lawyer remains personally and professionally liable for all transactions
- ❑ Monitoring for internal fraud
  - ❑ Deliver all bank statements to firm partner for initial examination of statement against checks and deposit slips
  - ❑ Examine supporting documentation
  - ❑ Personally review monthly three-way reconciliations
  - ❑ Perform surprise mini-audits
  - ❑ Be aware of your employees' personal situations

# Succession Planning

- **New** Iowa Court Rule 39.18
- Effective date : January 1, 2018
- Rule available at: <https://www.legis.iowa.gov/law/courtRules>
- Publications and forms available from OPR at the Client Security Commission's web page
- ISBA study committee working on the issue of implementation
- Currently requires that sole practitioners must have a written death or disability plan that designates a primary and an alternate active Iowa attorney in good standing
- *Note: there may well be changes to this rule before 1/1/2018...*

# Office Closures

- Must supplement or amend your Client Security report within 30 days of a change
- Lawyer's trust account records must be maintained even in the event of dissolution or sale of a law practice
- Responsibility of all partners in a law firm to ensure the proper storage of and access to client trust account records

# Managing the Trust Account

1. Basic principles
2. What must/ must not be deposited
3. Making payments from the trust account
4. Earning the fee
5. Notice & accounting
6. Books and records maintenance
7. Triple reconciliations
8. The paperless office

# Basic principles of trust account operations

1. Do not commingle your own funds in the trust account (except for the limited exception for service charges).
2. Each client's funds in a pooled account must be treated as a separate subaccount.
3. A client can only spend his or her subaccount monies.
4. A client subaccount never should show a negative balance.
5. Only make disbursements from known good funds.
6. You must account to the penny at all times.
7. The end result for any client subaccount must be zero.
8. An audit trail is essential.

# *Iowa Court Rule 45.7*

## *Advance Fee & Expense Payments*



What funds must be deposited in the trust account?



All funds of clients, regardless of size, including advances for costs and expenses and excluding only “general retainer” fees

Do not pass go, do not collect \$200...

# The Corollary Question – What Does Not Go in the Trust Account?

- No funds belonging to the lawyer or the law firm may be deposited in the trust account; common examples include:
  - Fees already billed for and earned
  - Funds an attorney holds that are not related to the practice of law
- Exception: Funds reasonably sufficient to pay service charges
- Exception: Funds belonging in part to a client and in part to the lawyer or law firm



# Making payments from the Trust Account

- Some payments may not/ should not be made from the trust account
- Timing of Disbursements
  - Every deposit must be allowed to clear through the banking process before disbursement
  - Cash deposits, verified electronic transfers and bank certified checks support same day disbursement
  - Cashier's checks should be allowed to clear completely
  - Personalized checks, drafts and money orders should be allowed to clear completely

# Making payments from the Trust Account (Cont.)

- Disbursements in cash or to “Cash” are no longer permitted
- All disbursements on behalf of a lawyer should be made by check directly to the lawyer or law firm
- Costs or expenses incident to services performed may be paid based on agreement with the client (\* *but* don't forget the accounting to the client)

# Making payments from the Trust Account (Cont.)

- Fees may - and should - be withdrawn as soon as they are earned and undisputed and the client has been given notice & accounting

## *What does it mean to earn the fee?*

- Can ethically take a fee only to the extent that work is actually performed on a client's case
- An advance fee is earned *once the service is performed*

# Notice and Accounting

- Client must be given notice and an accounting regarding any withdrawal of trust funds for fees or expenses
- Notice and accounting must be provided no later than the date the withdrawal is made
- Advance fees and expenses must be refunded if the fee is not earned or the expense is not incurred

# Books and Records Maintenance

- Maintain books and records
  - sufficient to show compliance with rule 32:1.15 and chapter 45
  - for at least six years after completion of the employment they relate to
- Iowa Court Rule 45.2(3) lists specific record requirements

# The “New” Rule 45.2

- ❖ Designed to address developments in technology and provide uniform guidelines
- ❖ Change incorporates Model Rules with a few differences to reflect Iowa practice
- ❖ New Rules have greater specificity
- ❖ Client Security had been informally recommending this approach for some time

# Financial Records to be Maintained

- ❑ A general ledger (a/k/a check register)
- ❑ A subaccount ledger for each client whose funds are deposited in the trust account
- ❑ Deposit slips, cancelled checks, and records of all electronic transfers
- ❑ All retainer and fee contracts with clients
- ❑ All accounting statements provided to clients or third persons showing disbursements from the trust account
- ❑ All bills provided clients for legal fees and expenses
- ❑ Checkbook registers and bank statements
- ❑ Monthly trial balances and monthly reconciliations
- ❑ Those portions of client files reasonably related to trust account transactions

# Implementing the Record-Keeping Duty

- Receipts for all cash fee payments, preferably countersigned by the client
- Memo describing each electronic, ACH, or wire transfer transaction, signed by the responsible attorney
- Property record for all property other than cash



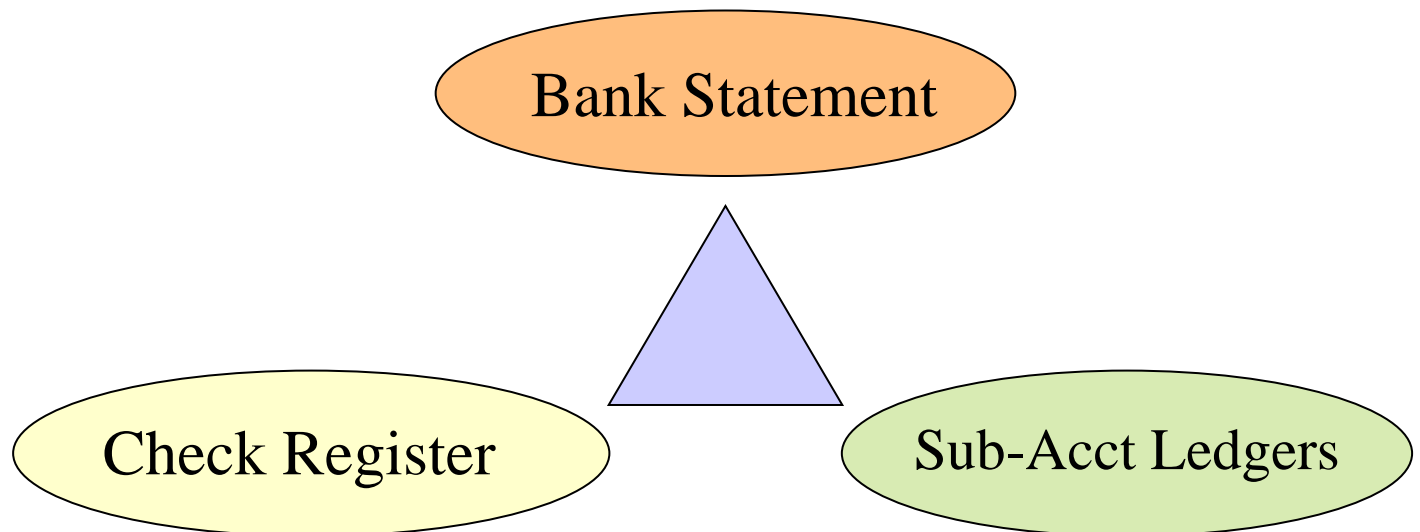
# Implementing the Record-Keeping Duty (cont.)

## Substitute checks and e-checks

- Old rules required attorneys to keep original cancelled checks
- Model rule specifically permits a lawyer to meet recordkeeping requirements by using substitute checks or electronic images of checks as an alternative to pre-numbered canceled paper checks
- For Iowa, must be documentation showing :
  - payee, signature of issuer, check #, account #, date, indication of the purpose of the check and the sub-account/client to which it relates

# Implementing the Record-Keeping Duty (cont.)

- Perform a monthly reconciliation of adjusted bank statement balance, checkbook register balance, and total of client sub-account balances



**TRIPLE RECONCILIATION FOR BANK STATEMENT ENDING : \_\_\_\_\_**

<b>1. BANK STATEMENT RECONCILIATION</b>					Amounts
Bank Balance Per Statement:					\$
<i>Plus</i> Outstanding Deposits:	Payor	Date	Amount		
			\$		
			\$		
	Total:			\$	
Subtotal:					\$
<i>Less</i> Outstanding Checks:	Payee	Date	Check #	Amount	
				\$	
				\$	
	Total:			(\$	)
Subtotal:					\$
<i>Less</i> IOLTA Interest:					(\$ )
<b>Reconciled Balance:</b>					\$

<b>2. CHECK REGISTER RECONCILIATION</b>		Amounts
Check Register Balance as of:	(Prior Month's Statement End Date)	\$
<i>Plus</i> Total Receipts This Month:		\$
Subtotal:		\$
<i>Less</i> Checks Written This Month:		(\$ )
<b>Reconciled Balance:</b>		\$

<b>3. CLIENT SUB-ACCOUNT BALANCE RECONCILIATION</b>			
Itemization:	Name of Trust Sub-Account	Date of Last Transaction	Amount
			\$
			\$
			\$
<b>Reconciled Balance (Total of Client Sub-Acct Balances):</b>			\$

# The Paperless Office

- ❑ Maintenance of trust account records in electronic, photographic, computer, or other media is allowed provided the records
  - ❑ Comply with other trust account record requirements
  - ❑ Can be produced in paper when necessary
- An attorney who maintains trust account records by computer should print and retain, on a monthly basis
  - the checkbook register
  - the balances of the subaccount ledgers
  - the reconciliation report
- ❑ Electronic records should be regularly backed up by an appropriate storage device

# Third party or internet-based file storage

- Rule allows storage either at the lawyer's office or at an off-site storage facility
- Availability of records
  - Disciplinary authority
  - Client
  - Interested third party
- Confidentiality
- Discontinuing third party or online storage

# *1 Common External Trust Account Fraud*

- Inducing Disbursement on Counterfeit Check
  - Certified Check Offered by New Client, That Exceeds Necessary Advance for Fees and Costs
  - Foreign Checks from New Client; Followed by Unexpected Need for Refund of Advance, by Wire
  - Check Drawn on Out of State Law Firm Trust Account, Immediate Disbursement Needed for Closing on a Sale Transaction
- Keystroke Logging Program Inserted by Social Media Site on PC Used for Electronic Banking
- Fraudulent ACH Debits

## *2 Preventing External Trust Account Fraud*

- No disbursements until incoming check clears
- No social media on law firm PCs
- Software for financial malware protection
- RSA token authentication for online access
- Two person approval for ACH transfers out
- ACH Positive Pay – bank screens ACH debits
- Regular Positive Pay – bank screens checks

# Specific Fee & Expense Issues

1. Electronic transfers & payment of fees
2. Flat fees
3. Unbundled legal services
4. Retainers paid by credit card
5. Client deposits over \$250,000
6. Retainers paid by a third party
7. Disputed funds
8. Abandoned or unclaimed funds/property



# How to handle..

## ➤ Electronic transfers

- Electronic transfers from trust accounts are specifically contemplated by Iowa Ct. R. 45.2(3)
- Lawyer must keep a record of electronic transfers showing:
  - 1. date
  - 2. amount
  - 3. trust account name or number from which withdrawn
  - 4. name of recipient
  - 5. name of person authorizing transfer

# How to handle..

- Electronic payment of fees (e.g. EDMS)
  - Include authority in attorney fee agreement
  - Deposit fees in the trust account
  - Withdraw only as incurred
  - Possible approaches:
    - direct debit of trust account
    - advance the fee, reimburse from trust account
  - Notice and accounting
  - Keep a detailed record of each and every payment

# How to handle..

## ➤ Flat fees

- *Board of Professional Ethics & Conduct v. Apland*  
577 N.W. 2d 50 (Iowa 1998)
- Can ethically take a fee only to the extent that work is actually performed on a client's case
- Fees are earned *once the service is performed*
- Include understanding re: percentage completion in attorney fee agreement
- Notice & accounting to the client are required
- Review Iowa S. Ct. case no. 15-0641 (filed 09/14/15)

ABC Law Firm  
100 Main Street  
County Seat, Iowa 50000

September 1, 2013

Re: Statement and Accounting

To: Mr. John Q. Client  
15 Apartment Building  
County Seat, Iowa 50000

Charges for Services

August 23, 2013	Filing Fee Advanced on Behalf of Client	\$ 85.00
August 30, 2013	Initial Consultation; Preparation and Filing of Dissolution of Marriage Petition; 20% of Flat Fee per Engagement Agreement	\$ 400.00
August 30, 2013	Total Amount Due	\$ 485.00

Trust Accounting

August 1, 2013	Beginning Balance of Client Funds in Trust Account	\$ 2,085.00
August 30, 2013	Fees and Advances Deducted per Statement Above	- 485.00
August 30, 2013	New Trust Account Balance	\$ 1,600.00

# How to handle..

## ➤ Unbundled legal services

- Iowa Rule of Professional Conduct 32:1.2(c) expressly permits limited representation and outlines requirements for written consent
- Usually require lawyer to follow the flat fee protocol
- Auditors recommend establishing separate sub-account ledger for the client for each matter in which limited representation is provided

# How to handle..

- Retainers paid by credit card
  - Fees payable to the credit card institution are the lawyer's responsibility
  - Interest must be paid to IOLTA program on the full face value of any retainer based on a credit card charge
  - Ensure credit card-based retainer is credited by the bank and is ineligible for charge-back before writing any checks against the retainer
  - print and retain verification, on a monthly basis

# How to handle..

- Client deposits over \$250,000
  - Choose a strong bank
  - For extended deposits, split over multiple banks (\*consider Insured Cash Sweep service)
  - For short-term deposits, speed is essential
  - Bank may offer commercial deposit insurance; can expense to client if agreed
  - Discuss issue with client – their personal deposits may affect coverage

# How to handle..

- Retainers paid by a third party
  - A lawyer may not accept compensation from a person other than the client unless 3 conditions are met (See IRPC 32:1.8(f))
  - Best practice if possible: suggest funds be provided directly to the client
  - Otherwise will need to clarify the parameters to the client and third party, document thoroughly
  - Try to obtain client's consent before depositing retainer in trust account
  - Consider a specific provision in fee agreement
  - Third party payor is not entitled to information regarding the client's matter (including accountings)



# How to handle..

## ➤ Disputed Funds

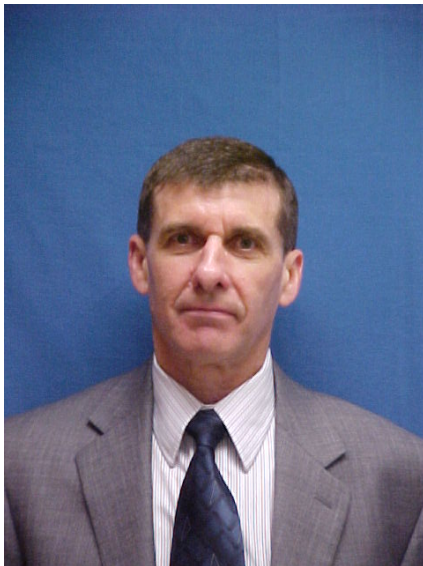
- See Iowa Rule of Professional Conduct 32:1.15(e)
- Can distribute portions as to which the interests are not in dispute
- If funds could generate positive net earnings, place disputed portion in an interest-bearing trust account for the benefit of the party ultimately found to be entitled to the funds
- Consider fee arbitration if it is an option

# How to handle..

- Abandoned or unclaimed funds / property
  - Must exercise reasonable due diligence to locate and communicate with the clients to whom the stale or excess funds belong
  - If disposition is impossible despite reasonable due diligence, then look to Iowa Code section 556.7
  - After time specified in section 556.7 has run, tender monies to the Treasurer of the State of Iowa (see sections 556.11 and 556.13)

# *“When will I be audited?”*

- Dual focuses of the audit program – education and compliance
- Trust account auditors perform regular periodic and on-demand special audits of lawyer trust accounts
- Lawyers annually report trust account information and compliance with trust account rules and procedures
- Auditors verify answers during trust account audits
- Recent Staff Changes
- New Programs



# Audit Checklist

- ❑ Last 6 months of bank statements, paid checks, deposit slips, debit or credit slips and memos
- ❑ Check register showing end of month balances for last 6 months
- ❑ Client subaccount ledgers showing last end of month balances
- ❑ Last 3 month's triple reconciliations
- ❑ Copy of firm letterhead
- ❑ List of matters for which attorney holds power of attorney or is serving as executor, trustee, conservator or guardian

# Common Trust Account Irregularities

- Failure to Take Fees When Earned
- Stale Outstanding Checks
- Unintentional Overdrafts
- Overages in Account Balance
- Shortages in Account Balance
- Improper Handling of Retainers

# Training and Oversight

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Top contributing factors to trust account irregularities:

1. Failure to perform monthly triple reconciliations
2. Untrained staff
3. Lack of attorney involvement

# Overdraft of Trust Account

Bank sends notice of overdraft to account holder and to IOLTA

IOLTA sends letter to account holder

No response to letter?  
IOLTA issues a 15-day notice

No response to 15-day notice?

**Attorney's license may be temporarily suspended**



# Keeping Current

**IOWA JUDICIAL BRANCH**  
*Administering justice under the law equally to all persons.*

Home About the Courts Administration For Attorneys Court Rules & Forms For the Public For the Media eFiling

**Court Rules & Forms**

- OVERVIEW
- IOWA COURT RULES
- RECENT AMENDMENTS & NEW IOWA COURT RULES
- PROTECTING PERSONAL INFORMATION
- SMALL CLAIMS FORMS
- FAMILY LAW FORMS
- DOMESTIC VIOLENCE FORMS
- NAME CHANGE FORMS
- COMMITMENT FORMS
- PROBATE FORMS
- PRO HAC VICE FORMS
- JUVENILE FORMS
- CRIMINAL PROCEDURE FORMS
- CIVIL PROCEDURE FORMS
- TRIAL SCHEDULING & DISCOVERY PLAN FORMS
- BUSINESS COURT PILOT PROJECT FORMS
- ELDER ABUSE FORM

You are here: [Home](#) > [Court Rules & Forms](#) > [Recent Amendments & New Iowa Court Rules](#)

**Amendments to Court Rules Regarding Exempt and Retired Attorney License Statuses (August 19, 2016)**  
Effective September 1, 2016  
[Order](#) (236 kb)  
[Chapter 39, 41 and 42 Amendments](#) (98 kb)  
[OPR Memo Re: New Rules Separating Retired and Inactive Statuses](#) (163 kb)

**In the Matter of Amending Expanded News Media Coverage Rules and Forms (July 22, 2016)**  
Effective immediately  
[Order](#) (560 kb)  
[Rules 25.3\(2\) and 25.5\(2\)](#) (227 kb)  
[Rule 25.10-Form 1](#) (330 kb)  
[Rule 25.10-Form 4](#) (330 kb)

**In the Matter of Adoption of New Iowa Court Rule 2.18(15) on Selection of Alternate Jurors (June 30, 2016)**  
[Order](#) (193 kb)  
[Chapter 2, Rules of Criminal Procedure](#) (142 kb)

**Adoption of Fee and Registration Rule for Admission Pro Hac Vice Before Iowa Courts and Administrative Agencies (February 19, 2016)**  
[Order](#) (349 kb)  
[Chapter 31, Admission to the Bar](#) (75 kb)

**Amendments to Iowa Court Rules on Professional Regulation (January 26, 2016)**  
Effective April 1, 2016  
[Order](#) (519 kb)  
[Chapter 34](#) (208 kb)  
[Chapter 35](#) (330 kb)  
[Chapter 36](#) (364 kb)

**Electronic Filing in the Appellate Court (January 21, 2016)**  
[Order](#) (179 kb)

**Amended Effective Date for ICR 39.18 (January 15, 2016)**  
[Order](#) (116 kb)

**Amended Effective Date for ICR 39.18 (November 24, 2015)**  
[Order](#) (116 kb)

**Amendments to Iowa Court Rules on Professional Regulation (November 20, 2015)**  
[Order](#) (332 kb)  
[Amendments to Division III of the Iowa Court Rules](#) (131 kb)

[http://www.iowacourts.gov/Court\\_Rules\\_Forms/Recent\\_Amendments\\_New\\_Iowa\\_Court\\_Rules/#](http://www.iowacourts.gov/Court_Rules_Forms/Recent_Amendments_New_Iowa_Court_Rules/#)

# Have a Trust Account Question?

- Administrative – call OPR at 515-725-8029
- Substantive
  - Trust Account Outline:
    - [http://www.iowacourts.gov/For\\_Attorneys/Professional\\_Regulation/Client\\_Security/](http://www.iowacourts.gov/For_Attorneys/Professional_Regulation/Client_Security/)
  - Current set of Iowa Court Rules:
    - <http://www.legis.iowa.gov/IowaLaw/courtRules.aspx>
  - Advisory Opinions:
    - <http://www.iabar.net/ethics.nsf>
  - Formal Disciplinary Opinions:
    - Westlaw, Lexis, FastCase
    - <http://www.iacourtcommissions.org/icc/SearchDiscipline.do>

# Opportunities for Service on Boards and Commissions

- Client Security Commission  
(5 lawyers, 2 lay members)
- Lawyer Trust Account Commission
- Commission on Continuing Legal Education
- Board of Examiners of Shorthand Reporters
- Attorney Disciplinary Board
- Grievance Commission
- Board of Law Examiners
- Commission on Unauthorized Practice of Law

*Thank you for attending!*

N. Tre Critelli (Des Moines)  
Trinity M. Braun-Arana (Coralville)

Office of Professional Regulation  
Iowa Judicial Branch Building  
1111 E. Court Avenue  
Des Moines, Iowa 50319

(515) 725-8029

- Email: [client.security@iowacourts.gov](mailto:client.security@iowacourts.gov)
- Web Site:  
[http://www.iowacourts.gov/For\\_Attorneys/Professional\\_Regulation/](http://www.iowacourts.gov/For_Attorneys/Professional_Regulation/)

# 501A TRUST ACCOUNTS

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2016 Nuts & Bolts Seminar  
Des Moines October 20  
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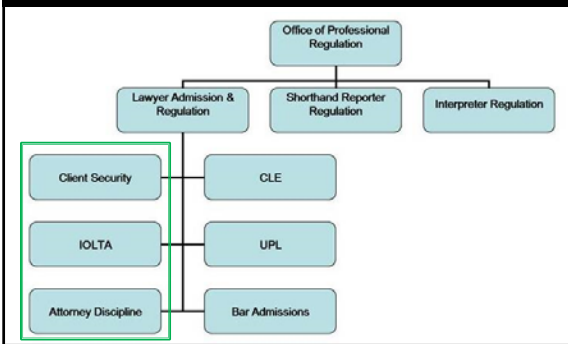
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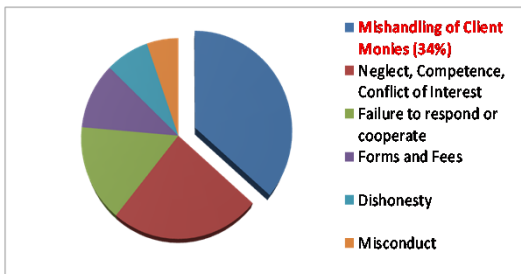
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- Service charges and fees?
- No overdraft protection or credit line
- Must supplement or amend your Client Security report

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### **Interest on your Trust Account**

- Interest On Lawyer Trust Account (IOLTA) program
- IOLTA produces interest income from pooled trust accounts previously non-interest bearing
- Annual grants approved by Court support legal services to the poor, law-related education
- Historically receipts of over \$1 million annually have been distributed

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## Authorized Signers

- ❑ **BEFORE:** only a lawyer admitted to the practice of law in Iowa *or* a person who is under the direct supervision of the lawyer
- ❑ **NOW:** as before + ability to designate successor attorney

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## Signature Authority for Stand-by Lawyer

- Iowa rules formerly did not address stand-by signature authority
- New Rule 45.11 allows sole lawyer signatory to designate another Iowa lawyer as stand-by signatory
- Possible triggering events include death, disability, disappearance, abandonment of practice, incapacity, suspension, disbarment

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## Non-lawyers as Authorized Signers

- ❑ The lawyer remains personally and professionally liable for all transactions
- ❑ Monitoring for internal fraud
  - ❑ Deliver all bank statements to firm partner for initial examination of statement against checks and deposit slips
  - ❑ Examine supporting documentation
  - ❑ Personally review monthly three-way reconciliations
  - ❑ Perform surprise mini-audits
  - ❑ Be aware of your employees' personal situations

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## Succession Planning

- **New** Iowa Court Rule 39.18
- Effective date : January 1, 2018
- Rule available at: <https://www.legis.iowa.gov/law/courtRules>
- Publications and forms available from OPR at the Client Security Commission's web page
- ISBA study committee working on the issue of implementation
- Currently requires that sole practitioners must have a written death or disability plan that designates a primary and an alternate active Iowa attorney in good standing
- *Note: there may well be changes to this rule before 1/1/2018...*

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## Office Closures

- Must supplement or amend your Client Security report within 30 days of a change
- Lawyer's trust account records must be maintained even in the event of dissolution or sale of a law practice
- Responsibility of all partners in a law firm to ensure the proper storage of and access to client trust account records

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## Managing the Trust Account

1. Basic principles
2. What must/ must not be deposited
3. Making payments from the trust account
4. Earning the fee
5. Notice & accounting
6. Books and records maintenance
7. Triple reconciliations
8. The paperless office

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## Basic principles of trust account operations

1. Do not commingle your own funds in the trust account (except for the limited exception for service charges).
2. Each client's funds in a pooled account must be treated as a separate subaccount.
3. A client can only spend his or her subaccount monies.
4. A client subaccount never should show a negative balance.
5. Only make disbursements from known good funds.
6. You must account to the penny at all times.
7. The end result for any client subaccount must be zero.
8. An audit trail is essential.

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## Iowa Court Rule 45.7 Advance Fee & Expense Payments



What funds must be deposited in the trust account?



All funds of clients, regardless of size, including advances for costs and expenses and excluding only "general retainer" fees

Do not pass go, do not collect \$200...

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## The Corollary Question – What Does Not Go in the Trust Account?

- No funds belonging to the lawyer or the law firm may be deposited in the trust account; common examples include:
  - Fees already billed for and earned
  - Funds an attorney holds that are not related to the practice of law
- Exception: Funds reasonably sufficient to pay service charges
- Exception: Funds belonging in part to a client and in part to the lawyer or law firm

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## Making payments from the Trust Account

- Some payments may not/ should not be made from the trust account
- Timing of Disbursements
  - Every deposit must be allowed to clear through the banking process before disbursement
  - Cash deposits, verified electronic transfers and bank certified checks support same day disbursement
  - Cashier's checks should be allowed to clear completely
  - Personalized checks, drafts and money orders should be allowed to clear completely

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## Making payments from the Trust Account (Cont.)

- Disbursements in cash or to "Cash" are no longer permitted
- All disbursements on behalf of a lawyer should be made by check directly to the lawyer or law firm
- Costs or expenses incident to services performed may be paid based on agreement with the client (\* *but* don't forget the accounting to the client)

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## Making payments from the Trust Account (Cont.)

- Fees may - and should - be withdrawn as soon as they are earned and undisputed and the client has been given notice & accounting

### *What does it mean to earn the fee?*

- Can ethically take a fee only to the extent that work is actually performed on a client's case
- An advance fee is earned *once the service is performed*

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## Notice and Accounting

- Client must be given notice and an accounting regarding any withdrawal of trust funds for fees or expenses
- Notice and accounting must be provided *no later than* the date the withdrawal is made
- Advance fees and expenses must be refunded if the fee is not earned or the expense is not incurred

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## Books and Records Maintenance

- Maintain books and records
  - sufficient to show compliance with rule 32:1.15 and chapter 45
  - for at least six years after completion of the employment they relate to
- Iowa Court Rule 45.2(3) lists specific record requirements

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## The "New" Rule 45.2

- ❖ Designed to address developments in technology and provide uniform guidelines
- ❖ Change incorporates Model Rules with a few differences to reflect Iowa practice
- ❖ New Rules have greater specificity
- ❖ Client Security had been informally recommending this approach for some time

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## Financial Records to be Maintained

- A general ledger (a/k/a check register)
- A subaccount ledger for each client whose funds are deposited in the trust account
- Deposit slips, cancelled checks, and records of all electronic transfers
- All retainer and fee contracts with clients
- All accounting statements provided to clients or third persons showing disbursements from the trust account
- All bills provided clients for legal fees and expenses
- Checkbook registers and bank statements
- Monthly trial balances and monthly reconciliations
- Those portions of client files reasonably related to trust account transactions

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## Implementing the Record-Keeping Duty

- Receipts for all cash fee payments, preferably countersigned by the client
- Memo describing each electronic, ACH, or wire transfer transaction, signed by the responsible attorney
- Property record for all property other than cash

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## Implementing the Record-Keeping Duty (cont.)

### Substitute checks and e-checks

- Old rules required attorneys to keep original cancelled checks
- Model rule specifically permits a lawyer to meet recordkeeping requirements by using substitute checks or electronic images of checks as an alternative to pre-numbered canceled paper checks
- For Iowa, must be documentation showing :
  - payee, signature of issuer, check #, account #, date, indication of the purpose of the check and the sub-account/client to which it relates

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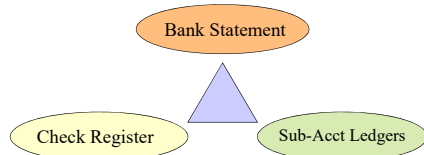
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## Implementing the Record-Keeping Duty (cont.)

- Perform a *monthly* reconciliation of adjusted bank statement balance, checkbook register balance, and total of client sub-account balances




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TRIPLE RECONCILIATION FOR BANK STATEMENT ENDING :				Amounts	
<b>1. BANK STATEMENT RECONCILIATION</b>					
Bank Balance Per Statement:				\$	
Plus:	Outstanding Deposits:	Payer	Date	Amount	
			\$	\$	
			\$	\$	
			Total:	\$	
			Subtotal:	\$	
Less:	Outstanding Checks:	Payee	Date	Check #	Amount
			\$	\$	\$
			\$	\$	\$
			Total:	\$	\$
			Subtotal:	\$	\$
Less NOLA Interest:				\$	\$
				\$	\$
			Reconciled Balance:	\$	\$
<b>2. CHECK REGISTER RECONCILIATION</b>					
Check Register Balance as of:				Amounts	
Plus Total Deposits This Month:	(Prior Month's Statement End Date)			\$	
				\$	
			Subtotal:	\$	
Less Checks Written This Month:				\$	
				\$	
			Reconciled Balance:	\$	
<b>3. CLIENT SUB-ACCOUNT BALANCE RECONCILIATION</b>					
Reconciliation:	Name of Trust Sub-Account	Draw of Last Transaction	Amount		
			\$		
			\$		
			\$		
			Reconciled Balance (Total of Client Sub-Acct Balances):	\$	

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## The Paperless Office

- Maintenance of trust account records in electronic, photographic, computer, or other media is allowed provided the records
  - Comply with other trust account record requirements
  - Can be produced in paper when necessary
- An attorney who maintains trust account records by computer should print and retain, on a monthly basis
  - the checkbook register
  - the balances of the subaccount ledgers
  - the reconciliation report
- Electronic records should be regularly backed up by an appropriate storage device

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### Third party or internet-based file storage

- Rule allows storage either at the lawyer's office or at an off-site storage facility
- Availability of records
  - Disciplinary authority
  - Client
  - Interested third party
- Confidentiality
- Discontinuing third party or online storage

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### <sup>1</sup> Common External Trust Account Fraud

- Inducing Disbursement on Counterfeit Check
  - Certified Check Offered by New Client, That Exceeds Necessary Advance for Fees and Costs
  - Foreign Checks from New Client; Followed by Unexpected Need for Refund of Advance, by Wire
  - Check Drawn on Out of State Law Firm Trust Account, Immediate Disbursement Needed for Closing on a Sale Transaction
- Keystroke Logging Program Inserted by Social Media Site on PC Used for Electronic Banking
- Fraudulent ACH Debits

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### <sup>2</sup> Preventing External Trust Account Fraud

- No disbursements until incoming check clears
- No social media on law firm PCs
- Software for financial malware protection
- RSA token authentication for online access
- Two person approval for ACH transfers out
- ACH Positive Pay – bank screens ACH debits
- Regular Positive Pay – bank screens checks

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## Specific Fee & Expense Issues

1. Electronic transfers & payment of fees
2. Flat fees
3. Unbundled legal services
4. Retainers paid by credit card
5. Client deposits over \$250,000
6. Retainers paid by a third party
7. Disputed funds
8. Abandoned or unclaimed funds/property

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## How to handle..

- Electronic transfers
  - Electronic transfers from trust accounts are specifically contemplated by Iowa Ct. R. 45.2(3)
  - Lawyer must keep a record of electronic transfers showing:
    - 1. date
    - 2. amount
    - 3. trust account name or number from which withdrawn
    - 4. name of recipient
    - 5. name of person authorizing transfer

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## How to handle..

- Electronic payment of fees (e.g. EDMS)
  - Include authority in attorney fee agreement
  - Deposit fees in the trust account
  - Withdraw only as incurred
  - Possible approaches:
    - direct debit of trust account
    - advance the fee, reimburse from trust account
  - Notice and accounting
  - Keep a detailed record of each and every payment

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## How to handle..

### ➤ Flat fees

- Board of Professional Ethics & Conduct v. Apland  
577 N.W. 2d 50 (Iowa 1998)
- Can ethically take a fee only to the extent that work is actually performed on a client's case
- Fees are earned *once the service is performed*
- Include understanding re: percentage completion in attorney fee agreement
- Notice & accounting to the client are required
- Review Iowa S. Ct. case no. 15-0641 (filed 09/14/15)

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ABC Law Firm  
100 Main Street  
County Seat, Iowa 50000

September 1, 2013  
Re: Statement and Accounting  
To: Mr. John Q. Client  
15 Apartment Building  
County Seat, Iowa 50000

Charges for Services

August 23, 2013	Filing Fee Advanced on Behalf of Client	\$ 85.00
August 30, 2013	Initial Consultation; Preparation and Filing of Dissolution of Marriage Petition; 20% of Flat Fee per Engagement Agreement	\$ 400.00
August 30, 2013	Total Amount Due	\$ 485.00

Trust Accounting

August 1, 2013	Beginning Balance of Client Funds in Trust Account	\$ 2,085.00
August 30, 2013	Fees and Advances Deducted per Statement Above	- 485.00
August 30, 2013	New Trust Account Balance	\$ 1,600.00

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## How to handle..

### ➤ Unbundled legal services

- Iowa Rule of Professional Conduct 32:1.2(c) expressly permits limited representation and outlines requirements for written consent
- Usually require lawyer to follow the flat fee protocol
- Auditors recommend establishing separate sub-account ledger for the client for each matter in which limited representation is provided

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## How to handle..

### ➤ Retainers paid by credit card

- Fees payable to the credit card institution are the lawyer's responsibility
- Interest must be paid to IOLTA program on the full face value of any retainer based on a credit card charge
- Ensure credit card-based retainer is credited by the bank and is ineligible for charge-back before writing any checks against the retainer
- print and retain verification, on a monthly basis

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## How to handle..

### ➤ Client deposits over \$250,000

- Choose a strong bank
- For extended deposits, split over multiple banks (\*consider Insured Cash Sweep service)
- For short-term deposits, speed is essential
- Bank may offer commercial deposit insurance; can expense to client if agreed
- Discuss issue with client – their personal deposits may affect coverage

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## How to handle..

### ➤ Retainers paid by a third party

- A lawyer may not accept compensation from a person other than the client unless 3 conditions are met (See IRPC 32:1.8(f))
- Best practice if possible: suggest funds be provided directly to the client
- Otherwise will need to clarify the parameters to the client and third party, document thoroughly
- Try to obtain client's consent before depositing retainer in trust account
- Consider a specific provision in fee agreement
- Third party payor is not entitled to information regarding the client's matter (including accountings)

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## How to handle..

### ➤ Disputed Funds

- See Iowa Rule of Professional Conduct 32:1.15(e)
- Can distribute portions as to which the interests are not in dispute
- If funds could generate positive net earnings, place disputed portion in an interest-bearing trust account for the benefit of the party ultimately found to be entitled to the funds
- Consider fee arbitration if it is an option

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## How to handle..

### ➤ Abandoned or unclaimed funds / property

- Must exercise reasonable due diligence to locate and communicate with the clients to whom the stale or excess funds belong
- If disposition is impossible despite reasonable due diligence, then look to Iowa Code section 556.7
- After time specified in section 556.7 has run, tender monies to the Treasurer of the State of Iowa (see sections 556.11 and 556.13)

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## "When will I be audited?"

- Dual focuses of the audit program – education and compliance
- Trust account auditors perform regular periodic and on-demand special audits of lawyer trust accounts
- Lawyers annually report trust account information and compliance with trust account rules and procedures
- Auditors verify answers during trust account audits
- Recent Staff Changes
- New Programs

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**Audit Checklist**

- ❑ Last 6 months of bank statements, paid checks, deposit slips, debit or credit slips and memos
- ❑ Check register showing end of month balances for last 6 months
- ❑ Client subaccount ledgers showing last end of month balances
- ❑ Last 3 month's triple reconciliations
- ❑ Copy of firm letterhead
- ❑ List of matters for which attorney holds power of attorney or is serving as executor, trustee, conservator or guardian

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**Common Trust Account Irregularities**

- Failure to Take Fees When Earned
- Stale Outstanding Checks
- Unintentional Overdrafts
- Overages in Account Balance
- Shortages in Account Balance
- Improper Handling of Retainers

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## Training and Oversight

Top contributing factors to trust account irregularities:

1. Failure to perform monthly triple reconciliations
2. Untrained staff
3. Lack of attorney involvement

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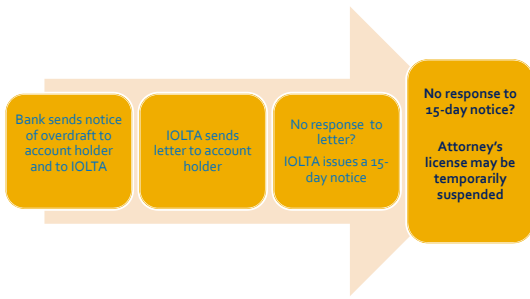
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## Overdraft of Trust Account



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## Keeping Current



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## Have a Trust Account Question?

- Administrative – call OPR at 515-725-8029
- Substantive
  - Trust Account Outline:
    - [http://www.iowacourts.gov/For\\_Attorneys/Professional\\_Regulation/Client\\_Security/](http://www.iowacourts.gov/For_Attorneys/Professional_Regulation/Client_Security/)
  - Current set of Iowa Court Rules:
    - <http://www.legis.iowa.gov/lowaLaw/courtRules.aspx>
  - Advisory Opinions:
    - <http://www.iabar.net/ethics.nsf>
  - Formal Disciplinary Opinions:
    - Westlaw, Lexis, FastCase
    - <http://www.iacourtcommissions.org/icc/SearchDiscipline.do>

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## Opportunities for Service on Boards and Commissions

- Client Security Commission  
(5 lawyers, 2 lay members)
- Lawyer Trust Account Commission
- Commission on Continuing Legal Education
- Board of Examiners of Shorthand Reporters
- Attorney Disciplinary Board
- Grievance Commission
- Board of Law Examiners
- Commission on Unauthorized Practice of Law

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*Thank you for attending!*

N. Tre Critelli (Des Moines)  
Trinity M. Braun-Arana (Coralville)

Office of Professional Regulation  
Iowa Judicial Branch Building  
1111 E. Court Avenue  
Des Moines, Iowa 50319

(515) 725-8029

- Email: [client.security@iowacourts.gov](mailto:client.security@iowacourts.gov)
- Web Site:  
[http://www.iowacourts.gov/For\\_Attorneys/Professional\\_Regulation/](http://www.iowacourts.gov/For_Attorneys/Professional_Regulation/)

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# 2016 Nuts & Bolts Seminar Johnston (Central Iowa)



## Hanging Out Your Own Shingle

**9:30 a.m.-10:30 a.m.**

**Presented by**

Magdalena Reese  
Cooper, Goedicke,  
Reimer & Reese, P.C.  
4949 Pleasant Street  
West Des Moines, IA 50266  
Phone: 515-225-1499

Tabitha Turner  
Turner Law Firm PLLC  
3835 University AVE  
Des Moines, IA 50311



**THURSDAY, OCTOBER 20, 2015**



### **Attorney Magdalena B. Reese**

Magda is originally from Legnica, Poland. She is a partner with Cooper, Goedicke, Reimer, & Reese, P.C., in West Des Moines, Iowa. Magda engages in the general practice of law, including criminal defense, family law, juvenile law, adoptions, guardianships/conservatorships, and mediation. She received her Bachelor of Science degrees in animal science and journalism and mass communications from Iowa State University in 2003. She received her Juris Doctorate from Drake University in 2007 and was admitted to the Iowa State Bar the same year. She was later admitted to practice before the Meskwaki Tribal Court. During law school, Magda competed on the mock trial and mediation teams and clerked at a litigation firm in Des Moines. Following graduation, she served as a law clerk for the 5th and 8th judicial districts of Iowa.

Magda is a member of the Iowa State and Polk County Bar Associations, Polk County Women Attorneys, Iowa Organization of Women Attorneys, and Blackstone Inn of Court. She serves as a board member for the Iowa Bar Review School and Parenting Way. She lives in West Des Moines with her husband and three sons.

### **Attorney Tabitha L. Turner**

Tabitha is originally from British Columbia, Canada. She received her B.S. of Psychology from Oregon State University. She attended Drake University Law School where she obtained her Juris Doctorate. Upon graduation, she immediately opened her own law practice with a fellow graduate. She has since branched out on her own and runs her own business.

Her fields of practice include primarily criminal defense, appellate, and family law. She is certified in mediation and has previously worked in the Meskwaki Tribal Court.



# SUCCESSFULLY HANGING YOUR OWN SHINGLE

Tabitha Turner, Turner Law Firm, Des Moines

Magdalena Reese, Cooper, Goedicke, Reimer & Reese, Des Moines

## WHY OWN YOUR OWN FIRM

- Autonomy
- Flexibility
- Creativity
  - Marketing
  - Practice areas
  - Forms
  - Strategies
- Responsibility
- Financial

## BUSINESS PLAN

- Budget
  - Business
    - Overhead
    - Loan
  - Personal
- Goals (first year and beyond)
  - Pay when you first start
- Re-visiting goals and comparing figures
- Staff
- Hourly rate

## BUSINESS STRUCTURE

- Seek advice
  - Tax implications
  - Salary implications
  - Staffing implications
  - Other requirements
  - Cost

## OFFICE STRUCTURE

- Partnership
- Associates
- Office sharing
- Of counsel

## OFFICE STRUCTURE – OFFICE SHARING

- Operate as separate firms
  - Conflicts
  - Confidentiality
  - Coverage
  - Clear distinction and potential authority to waive confidentiality

## YOUR OFFICE

- Building
  - Rent
  - Own
  - Renting space for meetings
  - Work from home
- Electronics
- IT
- Accountant
- Staff
- In person vs. virtual
  - Office
  - Staff
- Paper (or paperless) and misc supplies
- Funds
- Malpractice Insurance



## STAFF

- Legal assistant
- Receptionist
- Law Clerks
- Accountant
- Associates
- Virtual assistants

## COVERAGE

- SPD cases
  - Juvenile limitations
  - Criminal court limitations
- Inform client
- Think ahead

## PRO BONO

- Do it when you can
- Be realistic
- Volunteer Lawyer's Project
- Low payer
- Discounting bills
- Payment plans
  - Be realistic
  - Withdrawal
    - Time
    - Notice

# ACCOUNTING

- Trust Account
- Operating Account
- Taxes
- Accountant

## ACCOUNTING – TRUST ACCOUNT

- Trust Account
  - Monthly reconciliation
  - Statements to clients
    - Billing
    - Notices
  - Auditor (make them your friend ☺)
  - Ethical violations
    - Mixing money
    - Withdrawing before earning
  - Organization
    - Independent ledgers
    - Copies of receipts/bills/account balances
  - Successor Plan

## ACCOUNTING – OPERATING AND TAX ACCOUNTS

- Earned Funds
- Planning ahead
- Salary
- Bonus
- Dividends
- Supplies & Expenses
- Loans

## ORGANIZING YOUR BUSINESS

- Business Software
  - Practice Management
  - Tax Software
- Servers
- Child Support Guidelines
- Legal Research
- HotDocs

# MARKETING

- Make it FUN
- Word of mouth
- Business Identity
  - Website
  - Business cards
  - Advertising
- Legal organizations
- Listserve
- Court appointments



## COURT APPOINTMENTS

- Starting
  - Requirements
  - Counties – be realistic
- Keeping
  - Timeliness
  - Preparation
  - Continue relationships
  - Attitude
  - Learn something new
    - Tribal Court
    - Mental Health
    - Probate
- Expanding
  - Relationship with court staff

## PICKING CLIENTS

- Areas of practice
- Changing with experience
  - Types of cases
  - Clients
  - Retainer amount
  - Payment plan
- Client expectations
  - Payment
  - Timeliness
  - Responsiveness
- Instinct – learning with experience
- Referring

# NETWORKING

- Networking = Business
- Mentor
- Legal organizations (Young Lawyer's, PCWA, ISBA)
- Small and solo firm meeting
- Build relationships
  - Court staff
  - Other senior attorneys
- Web presence
  - Blogging
  - Social media
  - website
- Happy Hour
- Limitations

## WORK – LIFE BALANCE

- Have one
- Depression, substance abuse, alcohol abuse, mental health
- Set boundaries
  - Time
  - Family
  - Number/type of cases
- Vacation!
- Avoid burnout
- Hours
- Be efficient in the office

## DEALING WITH OPPOSING COUNSEL

- Be professional
- Be patient
- Stick to your guns
- Reputation
- Document

# NEW CLIENT INTAKE SHEET

## CLIENT INFORMATION

Name: \_\_\_\_\_

Telephone number: \_\_\_\_\_

Address: \_\_\_\_\_

Email: \_\_\_\_\_

EIN or SSN: \_\_\_\_\_ DOB: \_\_\_\_\_

Client Employer/Address: \_\_\_\_\_

ARAG # (if applicable): \_\_\_\_\_

Upcoming court hearings related to this matter: \_\_\_\_\_

Type of Case: (please check appropriate case type)

\_\_\_ Dissolution of Marriage / Modification / Custody

\_\_\_ Bankruptcy

\_\_\_ Juvenile (ex: Juvenile Delinquency, CINA)

\_\_\_ Criminal (ex: OWI, Domestic Abuse, Assault)

\_\_\_ Estate Planning (ex: Wills/Trusts)

\_\_\_ Other (please list): \_\_\_\_\_

**How did you hear about us?** (please check appropriate box(s))

\_\_\_ YellowBook Phone Book Ad      \_\_\_ Internet/ Website

\_\_\_ Qwest Dex Phone Book Ad      \_\_\_ Court Appointed

\_\_\_ Legal Services Plan  
(if service plan, indicate what type) \_\_\_\_\_

\_\_\_ Referral (if referral, indicate who referred you) \_\_\_\_\_

**FOR FAMILY LAW AND JUVENILE LAW CASES**

Spouse's / Other party:

Name \_\_\_\_\_

S.S. #: \_\_\_\_\_

Address: \_\_\_\_\_

E-mail: \_\_\_\_\_

Phone number: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

Date of Marriage: \_\_\_\_\_

Place of Marriage (include county): \_\_\_\_\_

Address of real property owned: \_\_\_\_\_

Present income (self): \_\_\_\_\_

Present income (spouse): \_\_\_\_\_

Child(ren) with above spouse or other party:

Name(s) and date(s) of birth: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Child S.S. #: \_\_\_\_\_

Address: \_\_\_\_\_

Other Child(ren):

Name(s), date(s) of birth, and other parent's name(s): \_\_\_\_\_

\_\_\_\_\_

S.S. #: \_\_\_\_\_

Address: \_\_\_\_\_

Court Orders currently in place:

Type (ex: dissolution, custody, support, TPR): \_\_\_\_\_

Date entered: \_\_\_\_\_

County & Case number: \_\_\_\_\_

Names of attorneys involved: \_\_\_\_\_



**FOR CRIMINAL LAW CASES**

Date and location of incident: \_\_\_\_\_

Pending charge & county: \_\_\_\_\_

Date and location of arrest: \_\_\_\_\_

Arresting Agency and incident #: \_\_\_\_\_

Name and contact information for alleged victim(s): \_\_\_\_\_

\_\_\_\_\_

Name and contact information for any witnesses: \_\_\_\_\_

\_\_\_\_\_

Alleged injuries to victim(s): \_\_\_\_\_

Relationship to victim(s): \_\_\_\_\_

Were you intoxicated/under the influence at time of incident (explain): \_\_\_\_\_

Probationary status & name of PO: \_\_\_\_\_

Prior criminal history: \_\_\_\_\_

\_\_\_\_\_

Prior criminal history and history of reporting by alleged victim: \_\_\_\_\_

\_\_\_\_\_

Driver's license status: \_\_\_\_\_

Testing done at the scene or any other location by medical staff or police (explain): \_\_\_\_\_

\_\_\_\_\_

Photos or video taken by anyone (explain): \_\_\_\_\_

Court Orders currently in place: \_\_\_\_\_

Prior or current attorneys involving this matter: \_\_\_\_\_

**CRIMINAL CASE**

**Client:** \_\_\_\_\_  
**Case No:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
**Phone:** \_\_\_\_\_ (h) \_\_\_\_\_ (c)  
**Co. Attorney:** \_\_\_\_\_  
**Crim. Charge:** \_\_\_\_\_

Arrest Date: \_\_\_\_\_  
Speedy Trial: \_\_\_\_\_  
Speedy Waiver: \_\_\_\_\_  
Trial Info: \_\_\_\_\_  
Depo Deadline: \_\_\_\_\_  
Motion Deadline: \_\_\_\_\_  
Limine Deadline: \_\_\_\_\_  
Init. App. \_\_\_\_\_  
Prelim. Hrg: \_\_\_\_\_  
Arraignment: \_\_\_\_\_  
PTCs: \_\_\_\_\_  
Hrg: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Trial: \_\_\_\_\_

Victim(s): \_\_\_\_\_  
Witness(s): \_\_\_\_\_  
Co-Defendant(s): \_\_\_\_\_  
Discovery: \_\_\_\_\_  
Other contacts: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**FAMILY LAW CASE**

Client: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ (h) \_\_\_\_\_ (c)

Opposing Counsel: \_\_\_\_\_

Opposing Party: \_\_\_\_\_

Child(ren): \_\_\_\_\_

Petition Filed: \_\_\_\_\_

Petition Served: \_\_\_\_\_

Answer Filed: \_\_\_\_\_

PTC: \_\_\_\_\_

Temp Hrg: \_\_\_\_\_

Mediation: \_\_\_\_\_

Trial: \_\_\_\_\_

Deadlines

Financials: \_\_\_\_\_

Mediation: \_\_\_\_\_

CIM: \_\_\_\_\_

Child Support Guidelines: \_\_\_\_\_

Discovery Deadlines

Admissions: \_\_\_\_\_

RFP: \_\_\_\_\_

Roggs: \_\_\_\_\_

**JUVENILE CASE**

**Client:** \_\_\_\_\_

**Case No:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Phone:** \_\_\_\_\_ (h) \_\_\_\_\_ (c)

**GAL:** \_\_\_\_\_

**County Attorney:** \_\_\_\_\_

**Parent/Attny:** \_\_\_\_\_

**Parent/Attny:** \_\_\_\_\_

**Parent/Attny:** \_\_\_\_\_

**DHS:** \_\_\_\_\_

**FSRP:** \_\_\_\_\_

**Parent's therapist:** \_\_\_\_\_

**Child's therapist:** \_\_\_\_\_

**Child's placement:** \_\_\_\_\_

**BHIS/other:** \_\_\_\_\_

**Substance Abuse:** \_\_\_\_\_

**Mental Health:** \_\_\_\_\_

**Removal:** \_\_\_\_\_

**PTC:** \_\_\_\_\_

**Adjudication:** \_\_\_\_\_

**Disposition:** \_\_\_\_\_

**Reviews:** \_\_\_\_\_

**Permanency:** \_\_\_\_\_

# 2016 Nuts & Bolts Seminar Johnston (Central Iowa)



## Employment Law 101

**10:45 a.m.-11:30 a.m.**

**Presented by**

Katie Graham

Nyemaster Goode PC

700 Walnut Street, Suite 1600

Des Moines, IA 50309



**THURSDAY, OCTOBER 20, 2016**

# EMPLOYMENT LAW 101

**Katie Graham**

Direct Number: (515) 283-8026 | Facsimile: (515) 283-3108 | E-Mail: [kgraham@nyemaster.com](mailto:kgraham@nyemaster.com)  
700 Walnut, Suite 1600 | Des Moines, IA 50309-3899 | (515) 283-3100

Attorneys at Law | Offices in Des Moines, Ames and Cedar Rapids

# IOWA: AT-WILL EMPLOYMENT STATE

## At-will

- Employment can be terminated at any time for any reason or no reason at all so long as termination is a lawful reason

# EXCEPTIONS TO AT-WILL EMPLOYMENT

## Exceptions

- **Contract Employee**
  - **Oral Contract: definite terms as to salary, benefits, length of employment**
    - **Offer letters**
    - **Employee handbook**



## EXCEPTION TO AT-WILL



- **Statutory Exceptions**
- **Judge-made exceptions**

# STATUTORY EXCEPTIONS: FEDERAL LAW

## PRIMARY CONTENDERS

- **Title VII, Civil Rights Act of 1964, 42 U.S.C. §§2000e-2, 2000e-3(a)**
  - prohibits discrimination based on race, color, religion, sex or national origin and retaliation for exercising Title VII rights

# **STATUTORY EXCEPTIONS: FEDERAL LAW**

## **PRIMARY CONTENDERS**

- **Age Discrimination in Employment Act of 1967 ("ADEA"), 29 U.S.C. §§623, 631, 633(a)**
  - **prohibits age-based discharge of individuals over 40 and reprisals for exercising statutory rights**

# STATUTORY EXCEPTIONS: FEDERAL LAW

## PRIMARY CONTENDERS

- **Americans with Disabilities Act, as amended, 42 U.S.C. §12112(a)**
  - prohibits discrimination of a "qualified individual with a disability" because of the disability
  - Employment, Public Service, Public Accommodation

# **STATUTORY EXCEPTIONS: FEDERAL LAW**

## **PRIMARY CONTENDERS**

- **Family and Medical Leave Act, 29 U.S.C. §2615**
  - **Permits eligible employees of covered employers to take unpaid, job-protected leave for serious health condition, to care for a sick family member, or to care for newborn or adopted child**

# STATUTORY EXCEPTIONS: FEDERAL LAW

## PRIMARY CONTENDERS

- **Fair Labor Standards Act, 29 U.S.C. §§215(a)(3), 216(b)**
  - prohibits discharge for exercising rights guaranteed by minimum wage and overtime provisions of the Act

# **STATUTORY EXCEPTIONS: FEDERAL LAW**

## **PRIMARY CONTENDERS**

- **Occupational Safety and Health Act of 1970 (OSHA), 29 U.S.C. §660(c)**
  - **prohibits discharge of employees and reprisal for exercising rights under the Act**

# STATUTORY EXCEPTIONS: FEDERAL LAW

## PRIMARY CONTENDERS

- **Federal Equal Pay Act of 1963**
  - prohibits employer from paying one member of opposite sex a higher wage for equal work because of sex



# STATUTORY EXCEPTIONS: STATE LAW

## PRIMARY CONTENDERS

- **Iowa Civil Rights Act of 1965, Chapter 216; § 216.6**
  - prohibits discrimination on the basis of age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion or disability
  - Section 216.11: prohibits retaliation

## STATUTORY EXCEPTIONS: STATE LAW

### PRIMARY CONTENDERS

- **Iowa Civil Rights Act of 1965, Chapter 216; § 216.6A**
  - State equivalent of equal pay act
  - unfair or discriminatory practice to discriminate against any employee because of the age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability of such employee by paying wages to such employee at a rate less than the rate paid to other employees who are employed within the same establishment for equal work on jobs, the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

# STATUTORY EXCEPTIONS: STATE LAW

## PRIMARY CONTENDERS

- **Private sector drug-free workplaces § 730.5**
  - prohibits requiring drug/alcohol tests except in strict conformance with policy and statute and prohibits discipline or discharge except as set forth in specific compliance with policy and statute

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- **Iowa Wage Payment Collection Act § 91A**
- **prohibits discharge or discrimination because an employee has filed a complaint, signed a claim or brought a wage payment action**

# STATUTORY EXCEPTIONS: CITY ORDINANCES

## PRIMARY CONTENDERS

- **Local Ordinance Enforcement**

# JUDGE-MADE EXCEPTIONS

- **Constructive Discharge**
  - **The test for constructive discharge is whether an employer creates conditions such that a reasonable person would consider them intolerable.**

# JUDGE-MADE EXCEPTIONS

## Springer Claims-Retaliation

- Pre-emption considerations
- Examples of recognized claims:
  - Workers' compensation retaliation
  - Reporting suspected child abuse
  - Providing truthful testimony

# EMPLOYMENT LAW: TORT CONSIDERATIONS

**Vicarious Liability: employer liable for employee's tort**

- **respondeat superior**
  - **an employer is liable for the negligence of an employee committed while the employee is acting within the scope of his or her employment**
  - **Strict liability for acts that occur within scope of employment**
  - **Proximate cause of Plaintiff's injuries is employee's wrongful act**



# EMPLOYMENT LAW: TORT CONSIDERATIONS

## Negligent Hiring, Supervision or Retention

- Proximate cause of Plaintiff's injuries is employer's negligence in hiring employee

# EMPLOYMENT LAW: SPECIALIZED AREA

## Special Considerations

- Private Sector Employee
- State Employee
- Federal Employee
- Unionized?

# EMPLOYMENT LAW: SPECIALIZED AREA

## Administrative Exhaustion

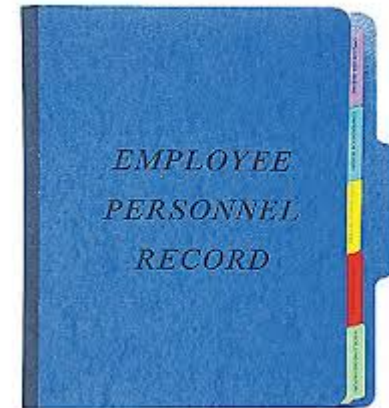
- Equal Employment Opportunity Commission, Iowa Civil Rights Commission
- Title VII, ICRA, ADEA, ADA

# INITIAL SCREENING

**Get the facts!**

- **Talk to witnesses**
- **Interview client**

# EMPLOYMENT FILE



**An employee has the right to see and obtain a copy of the personnel file pursuant to Iowa Code § 91B.1**

# REJECTED CASES

## Duty to prospective litigant

- Time sensitive due to Administrative Exhaustion requirements

# THE MODEL

## Meets Prima Facie

# CONTROLLING CLIENT EXPECTATIONS

**What is the case worth?**

**What are the risks?**

**How long will it take?**

**How much will it cost?**

**When will I see you again?**



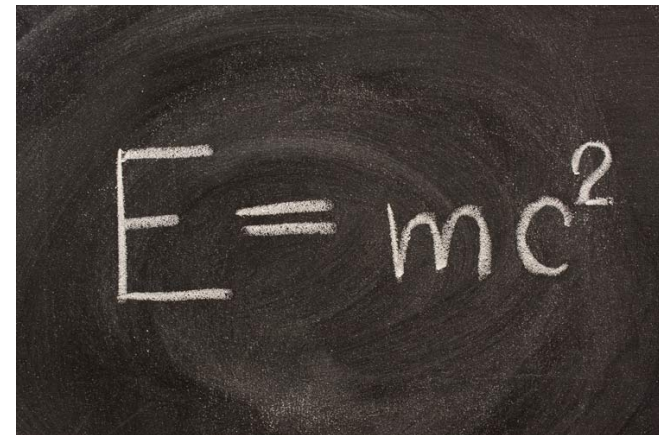
# WHAT ARE DEFENSE LAWYERS?



# WHAT ARE DEFENSE LAWYERS?

Employment wrong=\$

- EE made \$20,000 a year; finds \$20,000 job in 6 months
  - Damages = \$10,000



# WHAT ARE PLAINTIFF'S LAWYERS



## HEADING

### Christopher Columbus

- Explore new horizons-theories of damages
- \$20,000 loss wages + emotional distress + loss of future earnings

# WILL YOU TAKE THE CASE?

- **Example 1**
- **Example 2**

## QUESTIONS



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**EMPLOYMENT LAW 101**

**Katie Graham**

Direct Number: (515) 283-8026 | Facsimile: (515) 283-3108 | E-Mail: kgraham@nyemaster.com  
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**EXCEPTIONS TO AT-WILL EMPLOYMENT**

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### EXCEPTION TO AT-WILL



- Statutory Exceptions
- Judge-made exceptions

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**STATUTORY EXCEPTIONS: CITY ORDINANCES  
PRIMARY CONTENDERS**

- Local Ordinance Enforcement

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**JUDGE-MADE EXCEPTIONS**

- Constructive Discharge
  - The test for constructive discharge is whether an employer creates conditions such that a reasonable person would consider them intolerable.

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Springer Claims-Retaliation

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**EMPLOYMENT LAW: TORT CONSIDERATIONS**

Vicarious Liability: employer liable for employee's tort

- respondeat superior
  - an employer is liable for the negligence of an employee committed while the employee is acting within the scope of his or her employment
  - Strict liability for acts that occur within scope of employment
  - Proximate cause of Plaintiff's injuries is employee's wrongful act

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**EMPLOYMENT LAW: TORT CONSIDERATIONS**

Negligent Hiring, Supervision or Retention

- Proximate cause of Plaintiff's injuries is employer's negligence in hiring employee

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**EMPLOYMENT LAW: SPECIALIZED AREA**

Special Considerations

- Private Sector Employee
- State Employee
- Federal Employee
- Unionized?

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## EMPLOYMENT LAW: SPECIALIZED AREA

**Administrative Exhaustion**

- Equal Employment Opportunity Commission, Iowa Civil Rights Commission
- Title VII, ICRA, ADEA, ADA

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## INITIAL SCREENING

**Get the facts!**

- Talk to witnesses
- Interview client

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## EMPLOYMENT FILE



An employee has the right to see and obtain a copy of the personnel file pursuant to Iowa Code § 91B.1

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## REJECTED CASES

Duty to prospective litigant

- Time sensitive due to Administrative Exhaustion requirements

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## THE MODEL

Meets Prima Facie

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## CONTROLLING CLIENT EXPECTATIONS

What is the case worth?  
What are the risks?  
How long will it take?  
How much will it cost?  
When will I see you again?

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### WHAT ARE DEFENSE LAWYERS?



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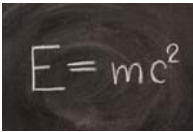
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### WHAT ARE DEFENSE LAWYERS?

Employment wrong=\$

- EE made \$20,000 a year; finds \$20,000 job in 6 months
  - Damages = \$10,000



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### WHAT ARE PLAINTIFF'S LAWYERS



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**HEADING**

Christopher Columbus

- Explore new horizons-theories of damages
- \$20,000 loss wages + emotional distress + loss of future earnings

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**WILL YOU TAKE THE CASE?**

- Example 1
- Example 2

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**QUESTIONS**



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# **LITIGATION TRACK**

## **12:30-5:00 P.M.**

### **Caveat**

*The printed materials contained in this book and the oral presentations of the speakers are not intended to be a definitive analysis of the subjects discussed. The reader is cautioned that neither the program participants nor The Iowa State Bar Association intends that reliance be placed upon these materials in advising your clients without confirming independent research.*

# 2016 Nuts & Bolts Seminar Johnston (Central Iowa)



## LITIGATION TRACK Summary Judgment and Trial Management Tips

**12:30 p.m.- 1:30 p.m.**

**Presented by**

Kent Gummert

Ledderer, Weston, Craig, PLC

4401 Westown Parkway, Suite 310

West Des Moines, IA 50266

Phone: 515-224-3911



**THURSDAY, OCTOBER 20, 2016**

Kent A. Gummert  
LEDERER WESTON CRAIG PLC.  
4401 Westown Parkway, Suite 310  
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I. Rule 1.981

- Be selective on which files to file a Motion for Summary Judgment
- Look at opponents view before filing. Find someone objective.
- BRIEF and to the point. Rambling resistance does not mean that there is a disputed fact.
- Put exact quotes in brief, don't just cite record.
- File a reply pursuant to IRCP 1.431(5). Especially if the record doesn't support resistance as cited by opponent.
- Partial summary judgments can be very effective.
- File ASAP, don't wait until 60 days before trial.

Iowa Code Annotated  
Iowa Court Rules  
I. Rules of Practice and Procedure  
Chapter 1. Rules of Civil Procedure (Refs & Annos)  
Division IX. Trial and Judgment  
D. Summary Judgments

I.C.A. Rule 1.981  
Formerly cited as IA R RCP R 237

Rule 1.981. On what claims

Currentness

Summary judgment may be had under the following conditions and circumstances:

**1.981(1) *For claimant.*** A party seeking to recover upon a claim, counterclaim, cross-petition or cross-claim or to obtain a declaratory judgment may, at any time after the appearance day or after the filing of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in that party's favor upon all or any part thereof.

**1.981(2) *For defending party.*** A party against whom a claim, counterclaim, cross-petition or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in that party's favor as to all or any part thereof.

**1.981(3) *Motion and proceedings thereon.*** The motion shall be filed not less than 60 days prior to the date the case is set for trial, unless otherwise ordered by the court. Any party resisting the motion shall file a resistance within 15 days, unless otherwise ordered by the court, from the time when a copy of the motion has been served. The resistance shall include a statement of disputed facts, if any, and a memorandum of authorities supporting the resistance. If affidavits supporting the resistance are filed, they must be filed with the resistance. Notwithstanding the provisions of rules 1.431 and 1.435, the time fixed for hearing or nonoral submission shall be not less than 20 days after the filing of the motion, unless a shorter time is ordered by the court. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages. If summary judgment is rendered on the entire case, rule 1.904(2) shall apply.

**1.981(4) *Case not fully adjudicated on motion.*** If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

**1.981(5)** *Form of affidavits; further testimony; defense required.* Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or filed therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, further affidavits, or oral testimony. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials in the pleadings, but the response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered.

**1.981(6)** *When affidavits are unavailable.* Should it appear from the affidavits of a party opposing the motion that the party for reasons stated cannot present by affidavit facts essential to justify the opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

**1.981(7)** *Affidavits made in bad faith.* Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused that party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

**1.981(8)** *Supporting statement and memorandum.* Upon any motion for summary judgment pursuant to this rule, there shall be annexed to the motion a separate, short and concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried, including specific reference to those parts of the pleadings, depositions, answers to interrogatories, admissions on file and affidavits which support such contentions and a memorandum of authorities.

#### **Credits**

Renumbered from Rule 237 and amended Nov. 9, 2001, eff. Feb. 15, 2002.

I. C. A. Rule 1.981, IA R 1.981

Current with amendments received through 6/15/16

# 2016 Nuts & Bolts Seminar Johnston (Central Iowa)



## LITIGATION TRACK Family Law 101

**1:30 p.m.- 2:45 p.m.**

**Presented by**

Amy Skogerson  
Skogerson Law PC  
413 Grant Street  
Van Meter, IA 50261  
Phone: 515-996-4045

Andrea McGinn  
McGinn Law, PLLC  
413 Grant Street  
Van Meter, IA 50261  
Phone: 515-996-4744



**THURSDAY, OCTOBER 20, 2016**



# The Proactive Practitioner

## **Amy J. Skogerson**

Skogerson Law, PC

413 Grant Street

Van Meter, IA 50261

Tel: 515.996.4045

Email: amy@

raccoonriverlaw.com

Web: www.

raccoonriverlaw.com

## **Andrea McGinn**

McGinn Law, PLLC

413 Grant Street

Van Meter, IA 50261

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Email: mcginnlawpllc

@gmail.com

## Tips & Tricks for Today's Family Law Lawyer

ISBA 2016 Nuts & Bolts Seminar



# + CLIENT PACKET



- Welcome Letter
- Fee Agreement
- Email Authorization
- Intake Form
- Financial Survey
- CIM Class Info
- Other Handouts
  - Mediation FAQs
  - Collaborative FAQs
  - Communication Tips
  - Parenting Info
  - Social Media Tips
  - Financial Planning
  - Business Cards

# + ATTORNEY FEES



- Iowa Rule of Professional Conduct 32: 1.5: FEES
- Initial consultations
- Hourly rate or flat fee
- Retainer amount
- Case budget
- Client budget
- Billing practices



# OFFICE PROTOCOLS



- Initial Consultation
- Pleadings
- Pretrial Documents
- Discovery
- Hearing on Temporary Matters
- Mediation
- Trial Prep
- **APPOINTMENT SCHEDULING!!!**



# DISCOVERY



- Discuss with client ahead of time
- Assess need for formal vs. informal
- Customize your requests
- Streamline your requests
- Calendar deadlines
- Schedule timely client appointments
- Consider subpoenas to obtain documents from third parties



# TEMPORARY MATTERS



## Determining Need

- What is present situation?
- Does my client need temporary financial assistance?
- Does other party have ability & responsibility to pay?
- Can the parties agree?

## Preparing for Temps

- Prepare for mediation
  - Pretrial docs
  - Witness affidavits
- Prepare for hearing
  - Affidavits- simple, chronological, relevant
  - Financial docs
  - Hearing outline



# MEDIATION



## ■ **Choose Wisely**

- Client centered focus

## ■ **Prepare Thoroughly**

- Complete pretrial documents & discovery
- Exchanged settlement proposals
- Working document in digital format

## ■ **Participate Meaningfully**

- Attorney attitudes impact case outcomes
- Focus on the positive and the FUTURE
- Possible partial agreements



# TRIAL



- Advise your client realistically.
- Meet pretrial deadlines.
  - Discovery, disclosure of experts, notice of witnesses and exhibits, updated financials, stipulation on uncontested matters, statement of requested relief
- Prep exam outlines.
- Prep your client.
- File a proposed decree prior to trial.
- Remember the judge is human too.



# OTHER PROFESSIONALS



- **FINANCIAL PROFESSIONALS**

- Consulting
- Budgeting
- Asset Division
- Tax Consequences
- Alimony Calculations
- General Advising
- Financial Neutral
- Expert Witness

- **MENTAL HEALTH PROFESSIONALS**

- Individual Counselor
- Co-Parent Counselor
- Discernment Counselor
- Family Counselor
- Divorce Coach

- **OTHER PROFESSIONALS**

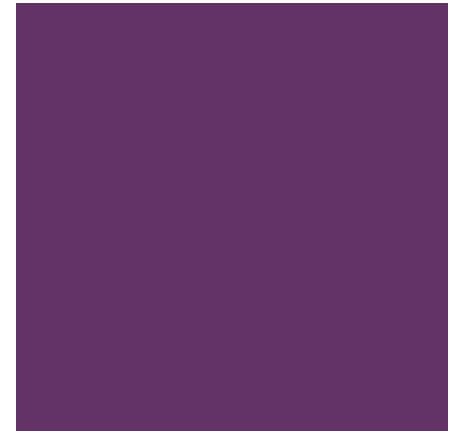
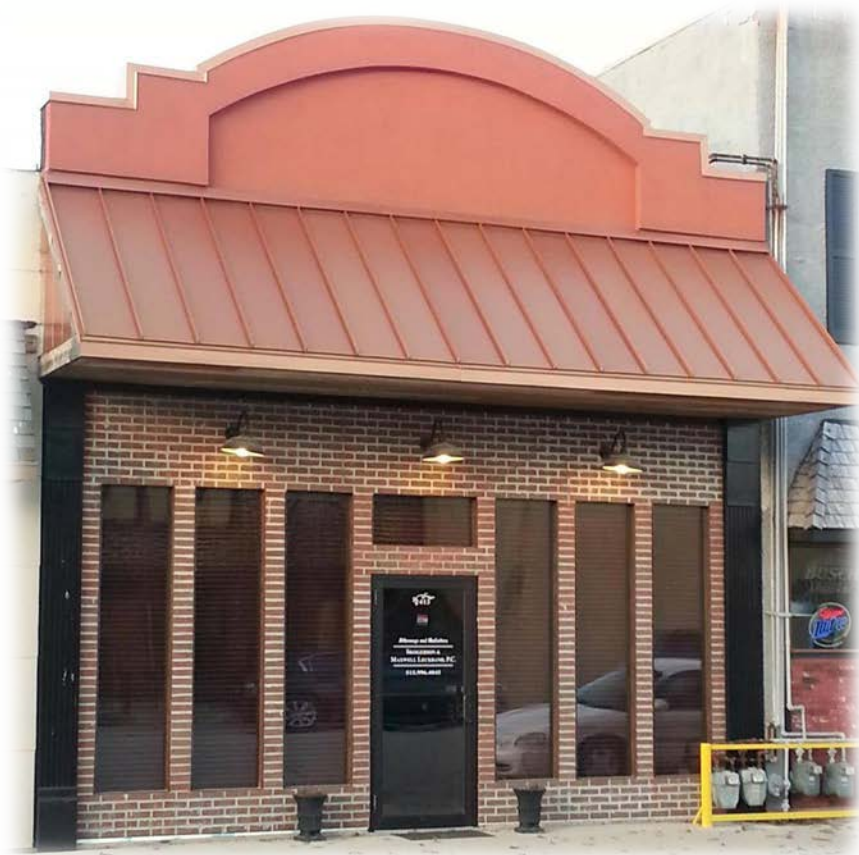
- Guardian Ad Litem
- Custody Evaluator
- Parenting Coordinator
- Vocational Expert



# + MOMENTS OF ZEN



- Find a MENTOR.
- Be ORGANIZED.
- Make SELF CARE a priority.
- Remember we became lawyers to HELP PEOPLE.



+

**QUESTIONS???**

**THANK YOU!!!!**

Dear New Client,

Enclosed you will find the following documents which need your attention in order for us to proceed further with your case:

- Retainer Agreement (2) – Please sign and date both originals. Then return one to our firm and keep the other for your own records.
- Email Authorization Form- This document is required by Skogerson Law, P.C. to communicate with you by email.
- Family Law Intake Form – Fill out all pages of this form to the best of your ability. The information you provide will allow us to prepare and file certain documents required by the court.
- Affidavit of Financial Status – Enclosed are two blank forms for drafting your financial affidavit, which is required by the Iowa Code. Also enclosed is a sample affidavit for your reference as well as an informational sheet defining income, expenses, assets and liabilities, all of which must be included on your financial affidavit. If your case involves an original dissolution action (i.e. you are seeking a divorce), the affidavit must include, to the best of your knowledge, all financial information for both you and your spouse. If your case involves an action for paternity, custody, support or modification of an existing decree or order, the affidavit should include financial information for yourself only.
- Children in the Middle Class List – If your case involves custody and care of minor children, Iowa law requires that you participate in a court-approved course to educate and sensitize you to the needs of your children and your former spouse within 45 days of service of the petition. A copy of your certificate of completion must be filed with the court. The enclosed class list is for Children in the Middle courses approved by the court within the Fifth Judicial District.
- Mediation Information - This document is for informational purposes only and is intended to give you a general sketch of the mediation process that is mandatory in family law matters in some Iowa counties.
- Collaborative Law Information - This document is for informational purposes only and is intended to give you a general information about the collaborative process, which is an option that may be available in your case.

Please note that you must also provide our office with documentation showing income from all sources for the last six (6) months and both Federal and State Income Tax Returns for the last three (3) years. In addition, we will need the most current account statement and/or other current financial documentation in support of each asset and each liability listed on your financial survey.

We appreciate your business with our firm and look forward to working with you on your important legal matter. Do not hesitate to contact us should you have any questions or concerns regarding your case.

Sincerely,

  
Amy J. Skogerson

413 Grant Street / P.O. Box 252  
Van Meter, Iowa 50261

Phone 515.996.4045 / Fax 515.996.4125  
amy@raccoonriverlaw.com

# SKOGERSON LAW, P.C.

## COLLABORATIVE ATTORNEY & MEDIATOR

**Amy J. Skogerson**  
amy@raccoonriverlaw.com  
www.raccoonriverlaw.com

413 Grant Street, P.O. Box 252  
Van Meter, Iowa 50261  
Phone 515.996.4045

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### LIMITED LEGAL SERVICES RETAINER AGREEMENT

Client: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Contact Number: \_\_\_\_\_

Matter(s): \_\_\_\_\_

#### INTRODUCTION

The following terms control our attorney-client relationship:

- We are paid a retainer at the start of the case.
- A paralegal or secretary will handle certain parts of document preparation in your case. It is simply less expensive for you that way. If secretarial staff were not doing the work, your lawyer would be, and that would be much more expensive for you.

#### AGREEMENT

1. You have asked this firm to act as your attorney. This document sets forth our agreement to represent you. It becomes effective upon our receipt of a signed copy of this document and the retainer fee.

2. The Limited Legal Services we agree to provide, include the following:
- Provide legal advice via office visits, telephone calls, fax, mail or email
  - Advise regarding availability of alternative means to resolving client's legal matter, including negotiation, mediation and collaborative process
  - Evaluate client's case and advise client about legal rights and responsibilities
  - Draft pleadings, motions, affidavits, financial affidavits, child support guideline worksheets (if applicable), agreements, proposed orders and other documents
  - Perform factual investigation via contacting witnesses, searching public records and conducting an in-depth interview of client
  - Conduct legal research and analysis
  - Evaluate settlement options
  - Conduct formal and/or informal discovery, to the extent deemed necessary and prudent in the sole discretion of your attorney
  - Plan for negotiations, mediation and/or joint collaborative meetings
  - File and/or present all court documents
  - Arrange service of process on opposing party
  - Refer client to additional professional resources as needed such as financial experts and/or mental health service providers

- Communicate with opposing counsel/party pursuant to applicable attorney ethics rules
- Refer client to litigation counsel if it appears client's matter will proceed to trial

**If a legal service is not listed in Paragraph 2 above, we have not agreed to provide it to you. In this matter, the excluded services include, but are not limited to: trial preparation or litigation.**

3. We cannot tell you in advance with certainty how much our fee will be or how much must be paid in costs. A proceeding may become more complicated than it first appears, and the time and effort we spend will depend in part on the cooperation of you, the opposing party or parties, and opposing counsel. We will try to keep the fees and costs as low as possible, consistent with fully protecting your interests. If you wish to discuss how to hold down future charges, tell us.

4. You are asked to pay a minimum retainer fee at the beginning of the case. That amount is \$\_\_\_\_\_ and compensates us for committing this office to represent you and for approximately \_\_\_\_\_ hours of work on your case, not including costs advanced on your behalf (discussed further below). The portion of the fee for which time has not been billed or costs expended will be returned.

5. It is probable, or at least possible, that the total bills to you for attorney fees and costs will exceed the amount of the minimum fee. We will send you monthly statements showing our fees and costs for the billing period. We will ask you to pay our charges monthly. Thus, as the case progresses, if it appears the charges will exceed the remainder of the minimum retainer fee in our account, you will be required to make additional advance payments or to pay those charges as they are billed. You must make the required advances or pay the balance due as shown on the statements within thirty (30) days.

6. It is impossible to determine in advance how much time will be needed to complete your case. We shall use our best judgment to determine the amount of time required, who can best perform the work, and the nature of the services to be performed in your best interest. We will keep you fully informed of all the time devoted to your case.

7. Our minimum periodic billing for fees will be based on an hourly charge for attorney work and an hourly charge for paralegal or secretarial work. The hourly rate shall include time spent in conferences, whether with you, with lawyers in this firm, with outside experts, professionals or others on the telephone; pretrial and discovery of data; drafting documents; in negotiations; in legal research; court time and travel to and from locations away from our office; in negotiation or discussion with the opposing party or parties or with opposing counsel. You will not be billed for clerical or secretarial time spent on purely clerical or routine functions.

8. A paralegal, secretary or other person in this office may work on your case, however, attorney Amy J. Skogerson will be your only attorney throughout our firm's representation of you in your case.

Lawyer time will be billed at a rate no higher than **\$225.00 per hour**.

Nonlawyer paralegal/legal assistant/law clerk time will be billed at rates up to \$150.00 per hour. Nonlawyers often prepare court documents and exhibit notebooks and otherwise assist in preparing your case.

9. It is the practice of our office to compute not less than one-tenth (1/10) of an hour for each telephone call or treatment of documents, no matter how short the call's duration or document's size. Such additional time as may actually be expended on the telephone, whether calls are from you or others or to you or others concerning your matter, also will be billed. Charges for correspondence, telephone calls, or document review will be made whether they are initiated by or received by this office. Some of our documents may be pre-drafted and will be billed at a fair amount, considering the length, complexity, and proper timing of the document.

10. Costs that we incur on your behalf will be itemized on your bill. If necessary or useful, we will employ professionals and/or experts on your behalf and will bill you directly for those. If you have any questions about bills from those persons or about this office's charges for professional and/or expert services, please call us.

11. We shall have the authority to make advances (pay costs) on your behalf in such amounts as we shall determine best in representing you in these proceedings, which advances

shall be for expenses, including but not limited to, extraordinary postage or photocopies, out-of-town travel expenses (including all meals and lodging while out of town, if applicable), deposition expenses (including cost of transcript and court reporter's fees for attendance), court costs (such as filing fees, service of process, subpoena costs, etc.), fees for professionals and/or experts that we deem necessary to assist in the preparation or proper handling of your case or the matter for which we are being retained. You shall keep payment current on all advances. You are liable for payment to all professionals and/or experts that we hire on your behalf and by this agreement you have appointed us as your agent to hire such professionals and/or experts.

12. Sometimes the court will order your adversary to pay part or all of your fee and out-of-pocket expenses (suit money) expended on your behalf, although at times the court makes no order for fees and costs. Because fees, suit money, and cost awards are totally unpredictable, court orders must be considered to be merely "on account." You are primarily liable for payment of the total fees, suit money, and costs.

Amounts received pursuant to court order will be credited to your account. The court award of fees, suit money, or costs, if any, does not set or limit our fee in any way on your liability to us. Costs against your adverse party are an additional service we perform on your behalf, and you will be expected to pay us fees on the same basis as is set forth in this agreement for performing such services. Furthermore, if the court does assess fees, suit money, and costs, or any part thereof, against the adverse party to apply on account of that which you owe to us, the collection of such award from the adverse party by way of contempt or any other proceeding shall also be considered as further services on your behalf.

Please understand that you are at all times primarily liable for all fees, suit money, and costs in full, and any pursuit against the adverse party is as an additional service for you.

13. You agree to pay us such additional fees and retainers and to reimburse us for our advances on your behalf no later than thirty (30) days from the date that we bill you. Our usual policy is to submit bills on a monthly basis.

14. The provisions of this agreement, in our discretion, may be disclosed to the court in connection with any application by us for fees or services that may be rendered on your behalf, and we have the right to advise the court of any amounts that we have received on account of fees.

15. **We shall have the right to withdraw from the case** if you do not make payments required by this agreement, if you have misrepresented or failed to disclose material facts to us, if you fail to follow our advice, or **if your case proceeds to trial**. We also have the right to withdraw in our sole, unfettered discretion – just as you have the right to discharge us in your discretion. We do not want to be in an attorney-client relationship that is unpleasant or uncomfortable and we are sure you do not want that either, thus either of us may end it if we so desire for no reason at all. **In any of these events, you will execute such necessary documents as will permit us to withdraw.** If we withdraw, we will refund to you the unused portion of the minimum retainer fee. We emphasize that we will withdraw without hesitation if we are not paid, if you misrepresent or hide things, or if we find you will not follow our advice.

It is not unusual for lawyers and clients to disagree about how a case should be handled. If you disagree with our handling of the case, tell us immediately. The only way we can function is for you to be as candid with us as we are with you. It is your matter.

16. We shall have a lien on all of your documents, property, or money in our possession for the payment of all sums due to us from you under the terms of this agreement. In addition, we shall be entitled to a lien ensuring that, if we elect, payment to us will come from the recovery, that is out of the results or fruits of litigation by a subsequent attorney in this matter, as is governed by law.

17. In the event it is necessary to institute suit against you for the collection of fees and advances due, you will pay, in addition to any judgment for such fees and advances, all costs and expenses necessitated thereby, including reasonable attorney's fees for the suit. Furthermore, in the event of any lawsuit as a result of any provision for the interpretation or otherwise or in any way arising out of our relationship as attorney and client, the prevailing party shall be entitled to collect all costs and expenses necessitated by such litigation, including reasonable attorney's fees.

18. By signing this agreement, you acknowledge that we have made no guarantees as to the disposition of any phase of the matter or matters for which we have been retained, as all expressions relative to it are only our opinions.

19. **The provisions of this fee agreement apply only to the matter referenced above and, unless otherwise specifically provided, our representation of you will be for non-litigation proceedings in the district court only. If trial becomes necessary or you desire that appellate proceedings be instituted (whether interlocutory or plenary), we shall have the right to withdraw immediately and you will be required to retain new counsel for such trial or appellate work.** This agreement pertains only to our services to you through final judgment and appropriate post-judgment motions and requisite work on the above referenced matter. Unless we have written arrangements to the contrary, all work undertaken for you after the final judgment and appropriate motions pertaining thereto shall be billed at our hourly rates set forth above.

20. The provisions of this agreement are severable. If one provision is found by a court to be void or unenforceable, that provision shall be severed, and the remaining provisions of this Agreement shall remain in full force and effect. In all cases our firm will receive a reasonable fee not less than its hourly rate.

21. Your cooperation is important. So is ours. You must keep us informed immediately of any changes of address, telephone number, employment, and other pertinent circumstances. Full disclosure to us of all facts is essential to enable us to properly represent you. Your cooperation in promptly filling out and returning all papers sent to you is essential. **If, in our sole, unfettered discretion, we do not believe the attorney-client relationship is mutually cooperative, or you have failed to disclose information to us, or we determine that your case must proceed to trial, we shall have the right to withdraw from representing you and retain the earned portion of the minimum fee advanced to us.**

22. Likewise, if you lose confidence in our ability to fully and fairly inform you, advise you, or represent you competently, or for any reason, you may discharge us and receive the unearned portion of the retainer previously paid.

23. If you have any questions about this agreement, please call us immediately. The best time to resolve these questions is now. This is a legal, binding contract between you and this firm. Before signing, read it carefully and be sure you understand all of it. If there is anything you do not understand, ask about it. Do not hesitate to have this agreement reviewed by another attorney of your choice or by a friend or advisor. We encourage it.

24. Please sign this agreement and return it to us. It shall become effective when we receive it and upon receipt of the retainer. **Until we receive this signed document and the retainer amount, we do not represent you.** A copy is enclosed for your records.

25. A warning about cell phones and email. No one can guarantee the security of cellular telephones and/or electronic mail. If you choose to converse with us that way, be aware of the dangers of being overheard or having your conversation intercepted.

**I warrant that I have read the foregoing agreement, understand its contents, and enter into it knowingly, freely, and voluntarily.**

Date: \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Client Signature

\_\_\_\_\_  
Print Client Name

\_\_\_\_\_  
Attorney Signature

The Guarantor recognizes and agrees that they are not the client and that no attorney – client relationship exists between the Guarantor and Skogerson Law, P.C. The above named client, and not the Guarantor, has the sole absolute right to make all decisions regarding the case. There will be no communication of confidential information by Skogerson Law, P.C. to the Guarantor under any circumstances. The above named client has been the absolute right to place additional limits on any communication between Skogerson Law, P.C. and the Guarantor. The Guarantor does not have the right to require Skogerson Law, P.C. to cease work on the case or demand a refund of all or part of the retainer until such time as the above named client directs Skogerson Law, P.C. to cease work on the case or the case is concluded.

Date: \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Third Party Guarantor

\_\_\_\_\_  
Print Third Party Guarantor Name



## ADDENDUM TO LIMITED LEGAL SERVICES RETAINER AGREEMENT

This addendum to our Legal Services Agreement will memorialize that you have chosen the collaborative process in which to resolve the issues involved in the dissolution of your marriage. Our Legal Services Agreement is modified to the extent the following contradicts anything in our Agreement.

1. Process Choice. You and I have discussed the different options that are available to you in order to resolve your case. The one most known is litigation. You are aware that that is where a judge decides the case for you. There are also other choices such as mediation, a process that may be utilized as part of the collaborative process as well. I have also explained that the collaborative process is where you promise not to go into litigation and agree to allow me to guide you through the resolution process. You have decided to use the collaborative process. Your spouse must also agree to the collaborative process for this addendum to our agreement to take effect.

2. No Litigation. You have agreed to commit to a consensus building process in order to resolve the dissolution of marriage without litigation. That means that you will not threaten to “take it to court” before you come to an agreement. If you and your spouse work the collaborative process, but are unable to come to a resolution, you understand that I will no longer represent you. Your spouse’s attorney will no longer represent him/her. You will be required to hire new counsel to litigate your case. My representation also will terminate by the decision of either party to go to litigation, whether or not the decision is yours. There will be no refund of the fees that you have paid me (other than unearned funds in trust), and you will be required to finish paying whatever fees you have incurred in this process. I will not represent you in contested litigation against your spouse now, or in the future. When you come to an agreement in the collaborative process, I will, however, be an attorney of record for you for filing all documents and orders that are agreed to by both you and your spouse.

3. Full Disclosure. You agree to make a full disclosure of all nature, extent and value of your income, assets and liabilities. You understand that if I find that you are not making a full disclosure, I will withdraw as your collaborative counsel. This may be a signal to the other counsel that you have failed to disclose something.

4. The Process. The collaborative process will involved engaging in formal discussions and conferences for the purposes of settling all issues between you and your spouse. You agree to deal with your spouse honestly and with mutual respect for one another. You understand that the process will not work without your work and cooperation throughout the process.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

---

Amy J. Skogerson, Attorney

---

Client

# SKOGERSON LAW, P.C.

## COLLABORATIVE ATTORNEY & MEDIATOR

**Amy J. Skogerson**  
amy@raccoonriverlaw.com  
www.raccoonriverlaw.com

413 Grant Street, P.O. Box 252  
Van Meter, Iowa 50261  
Phone 515.996.4045

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### LIMITED LEGAL SERVICES RETAINER AGREEMENT FOR FLAT RATE DISSOLUTION ACTION

Client: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Contact Number: \_\_\_\_\_

Matter(s): \_\_\_\_\_

#### INTRODUCTION

The following terms control our attorney-client relationship:

- We are paid a retainer at the start of the case.
- A paralegal or secretary will handle certain parts of document preparation in your case. It is simply less expensive for you that way. If secretarial staff were not doing the work, your lawyer would be, and that would be much more expensive for you.

#### AGREEMENT

1. You have asked this firm to act as your attorney. This document sets forth our agreement to represent you. It becomes effective upon our receipt of a signed copy of this document and the retainer fee.

2. The Limited Legal Services we agree to provide, include the following:
- Provide legal advice via office visits, telephone calls, fax, mail or email
  - Evaluate client's case and advise client about legal rights and responsibilities
  - Draft pleadings, motions, affidavits, financial affidavits, child support guideline worksheets (if applicable), agreements, proposed orders and other documents
  - File and/or present all court documents
  - Arrange service of process on opposing party
  - Communicate with opposing counsel/party pursuant to applicable attorney ethics rules
  - Refer client to litigation counsel if it appears client's matter will need additional services and/or proceed to trial

**If a legal service is not listed in Paragraph 2 above, we have not agreed to provide it to you. In this matter, the excluded services include, but are not limited to: formal discovery, trial preparation or litigation.**

3. You are asked to pay a retainer at the beginning of the case in a sum equal to the flat rate fee agreed upon by our firm. That amount is **\$1,500.00** and compensates us for committing this office to represent you and for all hours of work on your case covered by this Agreement, including costs advanced on your behalf (discussed further above and below).

4. We will send you monthly statements showing our fees and costs for the billing period.  
5. It is impossible to determine in advance how much time will be needed to complete your case. We shall use our best judgment to determine the amount of time required, who can best perform the work, and the nature of the services to be performed in your best interest. We will keep you fully informed of all the time devoted to your case.

6. A paralegal, secretary or other person in this office may work on your case, however, attorney Amy J. Skogerson will be your only attorney throughout our firm's representation of you in your case.

Lawyer time will be billed at a rate no higher than **\$225.00 per hour up to a maximum of \$1,500.00.**

Nonlawyer paralegal/legal assistant/law clerk time will be billed at rates up to \$0.00 per hour. Nonlawyers often prepare court documents and exhibit notebooks and otherwise assist in preparing your case. **You also specifically authorize Cynthia Lange to work as an independent contractor providing paralegal services on your legal matter at the direction of Skogerson Law, P.C.**

7. Costs that we incur on your behalf will be itemized on your bill.

8. We shall have the authority to make advances (pay costs) on your behalf in such amounts as we shall determine best in representing you in these proceedings, which advances shall be for expenses, including but not limited to, extraordinary postage or photocopies, out-of-town travel expenses (including all meals and lodging while out of town, if applicable) and/or court costs (such as filing fees, service of process, subpoena costs, etc.).

9. The provisions of this agreement, in our discretion, may be disclosed to the court in connection with any application by us for fees or services that may be rendered on your behalf, and we have the right to advise the court of any amounts that we have received on account of fees.

10. **We shall have the right to withdraw from the case** if you do not make payments required by this agreement, if you have misrepresented or failed to disclose material facts to us, if you fail to follow our advice, or **if your case proceeds to trial.** We also have the right to withdraw in our sole, unfettered discretion – just as you have the right to discharge us in your discretion. We do not want to be in an attorney-client relationship that is unpleasant or uncomfortable and we are sure you do not want that either, thus either of us may end it if we so desire for no reason at all. **In any of these events, you will execute such necessary documents as will permit us to withdraw.** If we withdraw, we will refund to you the unused portion of the minimum retainer fee. We emphasize that we will withdraw without hesitation if we are not paid, if you misrepresent or hide things, or if we find you will not follow our advice.

It is not unusual for lawyers and clients to disagree about how a case should be handled. If you disagree with our handling of the case, tell us immediately. The only way we can function is for you to be as candid with us as we are with you. It is your matter.

11. In the event it is necessary to institute suit against you for the collection of fees and advances due, you will pay, in addition to any judgment for such fees and advances, all costs and expenses necessitated thereby, including reasonable attorney's fees for the suit. Furthermore, in the event of any lawsuit as a result of any provision for the interpretation or otherwise or in any way arising out of our relationship as attorney and client, the prevailing party shall be entitled to collect all costs and expenses necessitated by such litigation, including reasonable attorney's fees.

12. By signing this agreement, you acknowledge that we have made no guarantees as to the disposition of any phase of the matter or matters for which we have been retained, as all expressions relative to it are only our opinions.

13. **The provisions of this fee agreement apply only to the matter referenced above and, unless otherwise specifically provided, our representation of you will be for non-litigation proceedings in the district court only. If trial becomes necessary or you desire that appellate proceedings be instituted (whether interlocutory or plenary), we shall have the right to withdraw immediately and you will be required to retain new counsel for such trial or appellate work.** This agreement pertains only to our services to you through final judgment and appropriate post-judgment motions and requisite work on the above referenced matter. Unless we have written arrangements to the contrary, all work undertaken for you after

the final judgment and appropriate motions pertaining thereto shall be billed at our hourly rates set forth above.

14. The provisions of this agreement are severable. If one provision is found by a court to be void or unenforceable, that provision shall be severed, and the remaining provisions of this Agreement shall remain in full force and effect. In all cases our firm will receive a reasonable fee not less than its hourly rate.

15. Your cooperation is important. So is ours. You must keep us informed immediately of any changes of address, telephone number, employment, and other pertinent circumstances. Full disclosure to us of all facts is essential to enable us to properly represent you. Your cooperation in promptly filling out and returning all papers sent to you is essential. **If, in our sole, unfettered discretion, we do not believe the attorney-client relationship is mutually cooperative, or you have failed to disclose information to us, or we determine that your case must proceed to trial, we shall have the right to withdraw from representing you and retain the earned portion of the minimum fee advanced to us.**

16. Likewise, if you lose confidence in our ability to fully and fairly inform you, advise you, or represent you competently, or for any reason, you may discharge us and receive the unearned portion of the retainer previously paid.

17. If you have any questions about this agreement, please call us immediately. The best time to resolve these questions is now. This is a legal, binding contract between you and this firm. Before signing, read it carefully and be sure you understand all of it. If there is anything you do not understand, ask about it. Do not hesitate to have this agreement reviewed by another attorney of your choice or by a friend or advisor. We encourage it.

18. Please sign this agreement and return it to us. It shall become effective when we receive it and upon receipt of the retainer. **Until we receive this signed document and the retainer amount, we do not represent you.** A copy is enclosed for your records.

19. A warning about cell phones and email. No one can guarantee the security of cellular telephones and/or electronic mail. If you choose to converse with us that way, be aware of the dangers of being overheard or having your conversation intercepted.

**I warrant that I have read the foregoing agreement, understand its contents, and enter into it knowingly, freely, and voluntarily.**

Date: \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Client Signature

\_\_\_\_\_  
Print Client Name

\_\_\_\_\_  
Attorney Signature

# SKOGERSON LAW, P.C.

## ATTORNEYS & MEDIATORS

**Amy J. Skogerson**  
amy@raccoonriverlaw.com  
www.raccoonriverlaw.com

413 Grant Street, P.O. Box 252  
Van Meter, Iowa 50261  
Phone 515.996.4045

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### Email Authorization Form

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**In order to communicate with you by email, Skogerson Law, P.C. requires the following information. All information is kept strictly confidential and used only by Skogerson Law, P.C.**

Name	
Address City, State, Zip Code	
Email Address	

I authorize Skogerson Law, P.C. to **EMAIL** correspondence, requests for information and other documents to me whenever possible.

I understand that e-mail communication is not a secure form of communication and that confidentiality of any email cannot be ensured.

I understand that I may revoke this authorization at any time, but not retroactive to the release of information made in good faith, but notifying Skogerson Law, P.C. in writing at the address noted above.

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Signature

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Date

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**SKOGERSON LAW, P.C.  
FAMILY LAW INTAKE FORM**

The following information is required to either complete basic documents or provide general information about your current circumstances so that we may better serve you. By having you complete this intake form we hope to keep your legal expenses affordable and allow more attorney-client time for being responsive to your questions and concerns. If you do not have all of the information at this time, you may take this form with you to complete and return to our office. Please be advised that we will not begin work on your case until this completed form has been received by us along with your executed retainer agreement, completed financial survey and the requisite retainer fee. Thank you for your business with our firm.

This information is accurate as of: \_\_\_\_\_

**Information About You**

Full Legal Name	
Maiden Name (if applicable)	
Other Previous Names	
Age	
Date of Birth	
City & State of Birth	
Social Security #	
Current Address	
County of Residence	
Primary Phone #	
Email Address	
Employer 1	
Employer 1 Job Title	
Employer 1 Address & Phone	
Employer 1 Monthly Income Gross & Net	
Employer 2 (if applicable)	

Employer 2 Job Title	
Employer 2 Address & Phone	
Employer 2 Monthly Income Gross & Net	
Disability/Unemployment Insurance (Description & Amount)	
Highest Level of Education	
Location of Such Education	
Drivers License #	
# of Prior Marriages	

**Information About Other Party**

Full Legal Name	
Maiden Name (if applicable)	
Other Previous Names	
Age	
Date of Birth	
City & State of Birth	
County of Residence	
Social Security #	
Current Address	
Primary Phone #	
Email Address	
Employer 1	
Employer 1 Job Title	
Employer 1 Address & Phone	

Employer 1 Monthly Income Gross & Net	
Employer 2 (if applicable)	
Employer 2 Job Title	
Employer 2 Address & Phone	
Employer 2 Monthly Income Gross & Net	
Disability/Unemployment Insurance (Description & Amount)	
Highest Level of Education	
Location of Such Education	
Drivers License #	
# of Prior Marriages	

**For Dissolution Action - Information About Your Marriage**

Date of Marriage	
City, County & State of Marriage	
Date of Separation or Dissolution (if applicable)	
Length & Location of Current Residency	You:  Spouse:

Number of Prior Marriages:

Have either you or your spouse previously filed a dissolution action to dissolve your marriage? If so:

Date:

Action filed by:

Attorneys:

What was the disposition:



**Your Children From Prior Relationship(s)**

<b>Name</b>	<b>Age</b>	<b>Date of Birth</b>	<b>Soc Sec #</b>	<b>Special Needs</b>	<b>Grade in School</b>	<b>Who Has Custody</b>
1.						
2.						
3.						
4.						

**Other Party's Children From Prior Relationship(s)**

<b>Name</b>	<b>Age</b>	<b>Date of Birth</b>	<b>Soc Sec #</b>	<b>Special Needs</b>	<b>Grade in School</b>	<b>Who Has Custody</b>
1.						
2.						
3.						
4.						

**Children From This Relationship**

<b>Name</b>	<b>Age</b>	<b>Date of Birth</b>	<b>Soc Sec #</b>	<b>Special Needs</b>	<b>Grade in School</b>	<b>Who Has Custody</b>
1.						
2.						
3.						
4.						

It is necessary for us to know where and with whom the minor children of this marriage have lived for the past five years. Please add an additional sheet only if the minor children from this relationship have lived elsewhere during the past five years (from today's date). Include the beginning and end dates (month and year) along with the name, relationship, and address of the person with whom they resided.

**Information for Child Support Guidelines**

	<u>You</u>	<u>Other Party</u>
Parent Name		
# of children eligible for support in this case		
# of overnight visits noncustodial parent to have with child(ren)		
Yearly wage income		
Yearly self-employment income		
Yearly alimony income (received from former spouse(s) in prior relationship(s))		
Yearly unearned taxable income		
Other income		
# of Qualified Additional Dependents (child(ren) from other relationship(s))		
# of children (in this case) claimed as tax dependents		
Tax filing status – single, head of household, or separated		
# of dependents (in this case) age 17 and older		
Yearly union dues		
Yearly mandatory occupational license fees		
Yearly medical insurance (child's portion only)		
Yearly child support (paid out for child(ren) from another relationship(s))		
Yearly spousal support (paid out to former spouse not a party to present case)		
Yearly medical support (paid out for child(ren) from another relationship(s))		
Yearly child care expenses (for child(ren) in this case)		
School district in which party resides		

**Information About Your Co-Parenting Schedule**

What is the current co-parenting schedule between you and your child(ren)'s other parent?

What is the co-parenting schedule you desire to have with your child(ren) on a permanent basis?

**Other Topics to Discuss With the Attorney**

Custody of minor children

Visitation by spouse with minor children

Child support

Contribution from spouse to attorney fees

Alimony

Spouse providing health insurance for you

Temporary division of debts  
children

Spouse providing health insurance for

Restraining order

Restoring maiden name:

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Spouse providing life insurance with you and/or minor children as beneficiaries

Temporary division of personal property and belongings owned by you and your spouse

What else do you think we need to know about you or your case?

By whom were you referred to this law firm? If not a referral, please tell us how you learned of our firm.

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## BALANCE SHEET CATEGORIES

**Income** - money received, especially on a regular basis, for work or through investments; commonly includes, but is not limited to:

- Hourly wages
- Salary
- Dividends or other profit share proceeds
- Tips
- Commissions
- Bonuses
- Business allowances
- Rental property income

**Expense** - a thing on which one is required to spend money on an ongoing basis (cannot ever be paid to zero); commonly includes, but is not limited to:

- Payroll taxes – federal & state withholdings, social security & Medicare
- Health, dental & vision insurance premiums
- Home, auto & umbrella insurance premiums
- Life insurance premiums
- Retirement account contributions paid in by you personally
- Rent (but NOT a mortgage)
- Utilities – gas, electric, water, sewer & garbage
- Telephone &/or cell phone service
- Internet service
- Cable or satellite television
- Vehicle registration
- Property taxes
- Groceries / dining out
- Travel & entertainment
- Home maintenance & repairs
- Vehicle maintenance & repairs
- Pet care & maintenance
- Bank charges
- Charitable contributions
- Subscriptions
- Uncovered medical expenses – co-pays & other out of pocket medical expenses

**Asset** = property owned by a person or company, regarded as having value and available to meet debts, commitments, or legacies; commonly includes, but is not limited to:

- Real estate
- Vehicle
- Recreational vehicle
- Farm or other business equipment
- Livestock
- Bank accounts
- Retirement accounts
- Investments
- Coins &/or other collectibles of value
- Business ownership interest
- Judgment against or financial settlement with third party in your favor

**Liability** = something, typically money, that is owed or due (a debt that is ultimately intended to be paid to zero); commonly includes, but is not limited to:

- Mortgage
- Auto loan
- Personal loan
- Line of credit
- Credit card
- Student loan
- Outstanding medical bill
- Outstanding prior judgment
- Unpaid income or other federal or state tax liability

# 2016 Nuts & Bolts Seminar Johnston (Central Iowa)



## LITIGATION TRACK The Guilty Ones Are Easy

2:45 p.m.- 4:00 p.m.

Presented by  
Marc Wallace  
Assistant Public Defender



THURSDAY, OCTOBER 20, 2016



# The Guilty Ones Are Easy<sup>1</sup>

2016 Nuts & Bolts Seminar  
Coralville, Iowa  
October 21, 2016  
Criminal Law Outline  
Steven J. Drahozal

## Initial Appearance

### Procedure

- Governed by Rule 2.2
- Magistrate (or judge) informs defendant of right to retain counsel or request appointment of counsel if indigent
- Informs defendant of bail/ bond conditions
- Informs of right to request bond review
- Provides defendant with copy of the complaint
- Unless alleged offense is a simple misdemeanor, the “defendant shall not be called upon to plead”
- Informs defendant of right to a preliminary hearing (unless grand jury indictment or trial information is already filed)
- Defendant can waive or demand preliminary hearing per Rule 2.2(4)(a)
  - If demand, then preliminary hearing must happen “within a reasonable time”
    - Not later than 10 days if defendant is in custody
    - Not later than 20 days if defendant is not in custody
  - If waive, then indictment must happen within 45 days of arrest Rule 2.33(2)(a).  
The arrest is key. For a discussion of when a defendant is arrested, see *State v. Wing*, 791 N.W.2d 243 (Iowa 2010) **note that speedy indictment is different from speedy trial discussed below**

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<sup>1</sup> This is the answer to every person who asks, “How can you defend those people?” Defending people you might think are guilty is easy. The people you think who are innocent and caught in the system are the ones that really bother you.

- The time limits when the defendant demands “may be extended” upon a showing of good cause, but violation of the speedy indictment rule in 2.33(2)(a) requires dismissal *State v. Wing*, 791 N.W.2d 243 (Iowa 2010)

### **Bond/Bail**

- All offenses (except capital offenses of which there are none) are bailable - Iowa Const. art. 1 § 12
- This only applies “before conviction” so does not apply to probation or parole proceedings
- Bail must be fair (i.e.: not excessive) Iowa Const. art. I § 17; U.S. Const. amends. VIII, XIV *State v. Kellogg*, 534 N.W.2d 431 (Iowa 1995)
- “Excessive” bond is one considered excessive in light of the perceived evil of the offense *United State v. Salerno*, 481 U.S. 739, 754 (1987), *State v. Briggs*, 666 N.W.2d 573 (Iowa 2003)
- Factors to consider – safety of community appearance of defendant Iowa Code § 811.5
- The “primary purpose of bail” is to secure the defendant’s appearance *State v. Briggs*, 666 N.W.2d 573, 582 (Iowa 2003)
- Types of bail
  - Cash – defendant must post amount in full without bonding company
  - Cash or surety – defendant may post surety (go through a bondsman)
  - Unsecured appearance – generally not required to post an amount, but may be required to post a percentage of the bond (e.g.: 10% of total bond)
  - Own recognizance – no bond required and defendant released on promise to appear
- Uniform Bond Schedule (per Supreme Court Order dated August 2, 2007)<sup>2</sup>
  - Use of the uniform bond schedule is not required
  - The uniform bond schedule does not apply in all cases –see the order for more details

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<sup>2</sup> <http://www.iowacourts.gov/wfdata/frame8804-1263/File172.pdf#page=2&zoom=auto,-150,592> and [http://www.iowacourts.gov/about the courts/district courts/district court resources/uniform bond schedule/index.asp](http://www.iowacourts.gov/about_the_courts/district_courts/district_court_resources/uniform_bond_schedule/index.asp)

- Violation of §124.401(1)(a) & (b) (class "B" felony charge for manufacture or delivery of certain controlled substances, counterfeit substances, or substitute substances, including heroin, cocaine, and meth)—\$100,000.
- Violation of §124.401(1)(c) (class "C" felony charge for the above type crimes)—\$50,000
- Other class "B" felony—\$25,000
- Other class "C" felony—\$10,000
- Class "D" felony—\$5,000
- Aggravated misdemeanor—\$2,000
- Serious misdemeanor—\$1,000
- Simple misdemeanor (non-scheduled violation)—\$300
- Scheduled violations—amount established in State of Iowa Compendium of Scheduled Violations and Scheduled Fines<sup>3</sup>
- Bond review
  - Defendant is entitled to one review of the initial bond (not multiple reviews) Iowa Code §§ 811.2(4), 811.2(7)
  - If the judicial officer denies a change of bond, it may be summarily appealed to the district court Iowa Code § 811.2(7)

### **Preliminary Hearing/ Indictment**

- Indictment by grand jury is provided for in Iowa Rules of Criminal Procedure 2.3
- More common method of indictment is by information, known as “trial information”, see Rule 2.5
- Both methods are also permitted by the Iowa Constitution, see *State v. Abodeely*, 179 N.W.2d 347 (Iowa 1970)

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<sup>3</sup> The State of Iowa publishes this booklet annually. Simply search the internet for “State of Iowa Compendium of Scheduled Violations and Scheduled Fines”. The 2016 version is at <http://publications.iowa.gov/22572/1/Compendium%20Booklet%202016.pdf>

- Indictment is formal method of charging – complaint is not the indictment and defendant can be indicted for a different crime or crimes than are listed on the complaint
- The information must be supported by probable cause and accompanied by “minutes”
  - referred to as either “minutes of testimony” or “minutes of evidence”
  - Minutes must contain name and occupation of each witness, along with a “full and fair statement of the witness’ expected testimony [at trial].” Rule 2.5(3)
  - State is not required to call all of the witnesses listed in the information *State v. Castillo*, 315 N.W.2d 63, 65 (Iowa 1982)
  - Defendant (and counsel) entitled to a copy, but is not a public document Rule 2.4(6)(b)
- Preliminary hearing is usually not a hearing, but merely a filing of the trial information and minutes
- Defendant is not required to be present (i.e.: does not have a right to be present) Rule 2.27(1) (setting forth when the defendant shall be present)

### **Penalties for Offenses**

**Class A Felony** – life in prison without possibility of parole Iowa Code § 902.1

**Class B Felony** – not more than 25 years in prison Iowa Code § 902.9

**Class C Felony** – not more than 10 years in prison and minimum fine of \$1,000 and maximum of \$10,000 Iowa Code § 902.9

**Class D Felony** – not more than 5 years in prison and a minimum fine of \$750 and maximum of \$7,500 Iowa Code § 902.9

**Habitual Offender** (Defined as someone convicted of a Class C or Class D felony who has been convicted of a felony two or more times in any state or under federal law) – mandatory minimum of 3 years and maximum of 15 years Iowa Code § 902.8

- The mandatory minimum applies if the sentence is imposed – the sentence may, however, be suspended *State v. Washington*, 356 N.W.2d 192 (Iowa 1984)
- Court may also impose a fine on defendant who is a habitual offender *State v. Carstens*, 594 N.W.2d 436 (Iowa 1999)

**Forcible Felonies** – the Court may not suspend the sentences or defer judgment for forcible felonies and the sentences must be imposed for any felonious child endangerment, assault, murder, sexual abuse, kidnapping, robbery, human trafficking, arson in the first degree, and burglary in the first degree Iowa Code § 702.11 (certain exceptions apply and are listed in that section)

**Aggravated Misdemeanor** – not more than 2 years in prison and a minimum fine of \$625 and maximum fine of \$6,250

**Serious Misdemeanor** – not more than 1 year in jail and a minimum fine of \$315 and maximum fine of \$1,875 (the fine for a serious misdemeanor cannot be suspended unless it is possession of marijuana, or domestic abuse assault, both of which have statutes allowing for the suspension)

**Possession of marijuana (1<sup>st</sup> offense)** – not more than six months in jail and a fine of \$1,000, loss of driver's license for 180 days Iowa Code § 124.401(5), Iowa Code § 901.5(10)

**Simple Misdemeanor** – up to 30 days in jail and a minimum fine of \$65 and maximum fine of \$625

#### **Mandatory minimums**

- Persons convicted of murder in the 2<sup>nd</sup> degree, attempted murder, sexual abuse in the second degree, kidnapping in the second degree, robbery in the first or, and certain vehicular homicides must serve 70% of their sentences before being eligible for parole.
- Persons convicted of robbery in the second degree after July 1, 2016 must serve between one-half and 70% of the maximum sentence before being eligible for parole. Iowa Code § 902.12
- These mandatory minimums do not apply to offense that occurred when the defendant was a juvenile. *State v. Lyle*, 854 N.W.2d 378 (Iowa 2014)
- Persons convicted of interference with official acts also face a mandatory minimum fine of \$250

#### **Surcharges**

- All criminal fines that are imposed carry a 35% surcharge Iowa Code § 911.1

- Convictions for violations of Iowa Code Chapter 321J or Chapter 124, division IV also carry a mandatory \$10 D.A.R.E. surcharge
- Convictions for violations of Iowa Code Chapters 124, 155A, 453B, 713, 714, 715A, 716 or §§ 719.7, 719.8, 725.1, 725.2, or 725.3 carry a mandatory \$125 law enforcement initiative (LEI) surcharge

**Sex Offender Registry** – this is the subject of a CLE of its own, but be aware that if the underlying offense is a sex offense Iowa Code Chapter 903B may apply and do your research

### **Arrestment**

#### **Simple misdemeanors**

- can be conducted without the defendant through counsel
- consists of seeing the complaint, entering a plea and waiving or demanding a jury trial

#### **Indictable misdemeanors**

- can be conducted without the defendant
- need not be in writing if defendant is absent
- defendant entitled to have the indictment read to them, but can waive formal reading (it is typical to waive formal reading)
- defendant entitled to receive a copy of the information and minutes of not already received
- can enter one of the following pleas:
  - guilty (if plea complies with requirements of Rule 2.8(2)(b))
  - not guilty (most common)
  - former conviction or acquittal
- can waive or demand speedy trial
  - speedy trial is different from speedy indictment
  - if demand speedy trial, the case must be tried within 90 days of indictment Rule 2.33(2)(b)
  - if waive speedy, the case must be tried within 1 year of arrestment Rule 2.33(2)(c)

- a speedy trial demand at arraignment does not preclude waiving it later, but the above dates still control
- speedy trial can be reasserted after waiver and this starts a new 90 day period from the date it is reasserted
- counsel can waive the right to speedy trial, because it is not a personal right that can be waived only by defendant and counsel may do so with or without the defendant's consent *State v. LeFlore*, 308 N.W.2d 39, 41 (Iowa 1981)
- best practice is to have client sign a written waiver of speedy trial and file it

### **Felonies**

- defendant must be present either in person or via “interactive audiovisual closed circuit system” Rule 2.27(1)
- alternatively, counsel can file a written arraignment form provided by Rule 2.8(1) Rule 2.27(1)
- aside from the requirement that the defendant be present or that a written arraignment form be filed, the other procedures of an indictable misdemeanor arraignment apply

### **Pretrial Motions / Notices**

#### **Motions**

- Rule 2.11(2) lists motions that must be filed before trial
- Per Rule 2.11(3) failure to assert the defenses or objections is a waiver of those defenses or objections unless the court “for good cause shown” grants relief from the waiver
- All pretrial motions (except motions in limine) must be filed within 40 days of arraignment Rule 2.11(4)
- Motions in limine must be filed as soon as the grounds become apparent, but no later than 9 days before trial

#### **Notices**

- Before the defense deposes any State witness, the defendant must file a witness list with the names and addresses of all the witnesses the defendant anticipates calling (except for the defendant and surrebuttal witnesses) Rule 2.13(3)

- This duty to disclose witnesses is ongoing
- Alibi defense requires filed written notice to the State of intent to rely on the defense including the specific place(s) the defendant was at during the alleged offense, along with the names of the witnesses the defendant intends to call to support the alibi and there are time frames for filing a separate notice with the addresses of the witnesses Rule 2.11(11)(a)
- Insanity and diminished capacity defenses must also be disclosed in writing and the State is entitled to an expert examination of the defendant if the defendant files such a notice Rule 2.11(11)(b)
- Intoxication, entrapment, and self-defense (justification) defenses also require filed, written notice Rule 2.11(11)(c)
- Not all affirmative defenses require notice
  - The defendant may give evidence (i.e.: testimony) of any of the defenses for which notice is required regardless of whether notice is given Rule 2.11(11)(d) This means that if the defendant does not intend to rely on testimony from witnesses other than her/himself to support the defense, the notices need not be provided
  - Prescription drug defense (Iowa Code § 321J.2(7)(b)) is an affirmative defense, but the rules do not require notice; if, however, the defendant is deposing the State's witness(es) and the defendant intends to call anyone other than the defendant to discuss the prescription, the notice requirement of Rule 2.13(3) would apply

### **Guilty Plea**

In *Missouri v. Frye*, 132 S. Ct. 1399, 1402 (2012), Justice Kennedy observed that 94% of state criminal charges result in guilty pleas. Although a guilty plea resulting from a plea bargain sounds easier than a trial, counsel still has several duties

### **Factual Basis**

- Must ensure a factual basis exists for a guilty plea *State v. Schminkey*, 597 N.W.2d 785 (Iowa 1999)



- Factual basis must exist even if the plea is an *Alford* plea *State v. Schminkey*, 597 N.W.2d 785 (Iowa 1999)
- The court considers the entire record, this includes statements by defendant, presentence investigation report (PSI), statements by prosecutor, and minutes of testimony *State v. Schminkey*, 597 N.W.2d 785 (Iowa 1999)

### **Required Information to Defendant**

Per Rule 2.8(2), before the court can accept guilty plea, defendant must be informed (in writing or on the record for indictable misdemeanors or on the record for felonies) of the following:

- Nature of the charge(e.g.: charge is a Class D felony)
- Any mandatory minimum, if any
- Maximum possible punishment
- Right to a jury trial
- Right to assistance of counsel
- Right to confrontation and cross-examination
- Right not to be compelled to incriminate oneself
- Right to present evidence and witnesses
- Compulsory process (subpoena power)
- There will be no trial if the defendant pleads guilty
- A criminal conviction, deferred judgment, or deferred sentence may affect a defendant's federal immigration status
- Right to file a motion in arrest of judgement and that failure to do raise such a challenge precludes appeal (note that court rules do not require the court to inform defendant of timeline for motion in arrest of judgment and although court may tell the defendant of those timelines, it remains counsel's duty to make sure defendant is aware of time limitation, see discussion of post-trial motions below)
- Terms of any plea agreement must be placed in the record
- See attached written guilty plea
- For a recent discussion about what a defendant must be informed of, see *State v. Fisher*, 877 N.W.2d 676 (Iowa 2016)

- Does a defendant need to be informed that some convictions can be used in the future to enhance future charges (e.g.: OWI, theft, possession of a controlled substance)? This has not been addressed and although there is an argument that it is not an automatic enhancement and does not need to be disclosed, there is no harm in including it in the plea

### ***Alford Plea***

- All of the above applies to *Alford* pleas
- Make sure that client understands that if they enter an *Alford* plea and do not admit guilt it is still a criminal conviction and is treated no differently than if they had admitted guilt

### **Trial**

Full discussion of how to conduct a criminal trial is beyond the scope of this presentation, but there are a few issues related to a criminal trial that are unique including:

- Defendant's decision rather than counsel's
  - Defendant makes decision about whether or not to accept a plea offer or go to trial, regardless of counsel's advice. If go to trial, make a record outside the presence of the jury and the judge that you informed the defendant of the plea offer, that defendant understood the offer and that it was more favorable than the maximum punishment if convicted following trial, that defendant was aware it was his/her decision to accept the offer or go to trial, and that defendant voluntarily decided to go trial. Can also put on the record whether or not this was against the advice of counsel. *Missouri v. Frye*, 132 S. Ct. 1399 (2013) requires counsel to inform defendant of these things and making a pretrial record of it protects you from future ineffective assistance of counsel claims.
  - Defendant has a right to testify and a right to refuse to testify and can do either regardless of counsel's advice. Make a record outside the presence of the jury either way documenting that you discussed the issue with defendant, that defendant understands the right and has made a voluntary decision, is following or rejecting your advice, understands that if testifies is waiving right to remain

silent and must answer all questions put to her/him. If decides not to testify, make record that she/he understands can ask the court to instruct the jury that defendant has not testified and jury cannot infer guilt from that but the court only instructs that way if defendant requests it. (Some counsel do not want to request it because they believe it draws attention to the defendant's failure to testify.) This also protects you against future ineffective assistance of counsel claims

- At the close of the State's case, you must make a motion for a judgment of acquittal to preserve sufficiency of the evidence issues. The motion is made outside the presence of the jury and asserts that even in the light most favorable to the State, the State has failed to introduce sufficient evidence to prove its case and generate a jury question. The motion must be specific and identify which element(s) that the State has failed to prove in order to preserve the issue. *State v. Crone*, 545 N.W.2d 267, 270 (Iowa 1996) If the motion is denied, renew the motion at the end of the defense's case. The court may reserve ruling on the motion either before or after the verdict. Rule 2.19(8)

## **Sentencing**

### **Delay in sentencing**

- Defendant is entitled to a minimum 15 day delay in sentencing Rule 2.23(1)
- That delay can be waived Rule 2.23(1)

### **Deferred judgment** Iowa Code § 907.3

- If defendant consents and the offense qualifies, the court may defer judgment for a period of time and place the defendant on probation
- At the end of the period of deferment, the court expunges the offense so that a conviction does not enter against the defendant
- In lieu of a fine, the court may order a civil penalty that is not less than the amount of any criminal fine authorized for the offense Iowa Code §§ 907.1, 907.3, 907.14
- If the defendant has been convicted of a felony in any court in the United States (state or federal) the defendant is ineligible for a deferred judgment
- If the defendant has already had two or more deferred judgments in this or any other state, the court may not defer judgment

- If the defendant has received a deferred judgment for one felony, the court may not defer judgment
- Certain offenses are not eligible for a deferred judgment (E.g.: an OWI first with a blood alcohol content exceeding .150)
- Since the court defers, rather than enters judgment, the decision is not appealable
- The court may grant a single deferred judgment for a case involving multiple counts and it qualifies as one deferred judgment *State v. Stressman*, 460 N.W.2d 461 (Iowa 1990)

#### **Presentence Investigation Report (PSI) Iowa Code § 901.2**

- Report prepared by the Department of Correctional Services for use by the court at sentencing
- Mandatory in B, C, and D felonies along with some drug offenses
  - Although the preparation of the PSI is mandatory, its use at sentencing is not
  - Defendant can waive the use of PSI at sentencing if defendant is aware that the PSI might contain favorable information *State v. Thompson*, 494 N.W.2d 239 (Iowa 1992)
  - Court is not required to accept waiver of PSI and sentence defendant
- Optional in indictable misdemeanors
- Review the PSI prior to sentencing with defendant for errors or omissions

#### **Suspended Sentences Iowa Code 907.1**

- Unless prohibited by statute, the court may suspend a sentence
- The court sentences defendant to a period of incarceration but suspends the jail time and places the defendant on probation
- The court can also suspend the fine (except for serious misdemeanors)

#### **Factors the court may consider in sentencing Iowa Code § 907.5**

- Defendant's age
- Prior record
- Parole or probation status and performance
- Employment (or lack thereof)
- Family circumstances

- Nature and circumstances of the offense
- Other factors the court deems appropriate, e.g.:
  - Mental health
  - Substance abuse issues
  - Health issues
  - Education
  - Remorse (or lack thereof)

**Factors the court may not consider**

- Defendant pled guilty to lesser offense *State v. McKeever*, 276 N.W. 2d (Iowa 1979)
- Solely the nature of the offense *State v. Harris*, 528 N.W.2d 133 (Iowa Ct. App. 1994)
- Unproven charges or those not filed *State v. Lovell*, 857 N.W.2d 241 (Iowa 2014)

**Post-trial motions**

**Motion for New Trial**

- Must be made within 45 days of the verdict or no later than 5 days before sentencing, whichever is soonest Rule 2.24(2)
- Court may extend the time Rule 2.24(4)
- The reasons for granting a motion for new trial are set forth in Rule 2.24(2)(b)
- Upon a motion for new trial, the court has a “much broader” review of the evidence than in a motion for judgment of acquittal, and the court weights the evidence, both inculpatory and exculpatory and reaches witness credibility *State v. Ellis*, 578 N.W.2d 655 (1998)

**Motion in Arrest of Judgment**

- Must be made within 45 days of the verdict or no later than 5 days before sentencing, whichever is soonest Rule 2.24(3)
- Court may extend the time Rule 2.24(4)
- Grounds are set forth in Rule 2.24(3)
- Nothing precludes filing both a motion in arrest of judgment and motion for new trial

## **Resources**

**Iowa State Bar Association Criminal Law Section List serve** available to ISBA Criminal Law Section Members

**Iowa Practice Series Vols. 4, 4A**

**SPD-Indigent Defense Groupsite** <https://iowaspd.groupsie.com/main/summary>

**SAMPLE WRITTEN ARRAIGNMENT**

IN THE IOWA DISTRICT COURT FOR DUBUQUE COUNTY

STATE OF IOWA,	)	
	)	
Plaintiff,	)	
	)	WRITTEN ARRAIGNMENT AND
vs.	)	PLEA OF NOT GUILTY
	)	
DEFENDANT,	)	CRIMINAL NO. FECRXXXXXX
	)	
Defendant.	)	

COMES NOW the above-named Defendant in the above-captioned criminal case and under oath states:

1. I am represented by Attorney NAMES whose address and telephone number is Dubuque Public Defenders Office, 590 Iowa Street, Suite 1, Dubuque, Iowa 52001, Phone, (563-582-0750).

2. My current mailing and residence addresses and telephone number is:

NAME  
ADDRESS  
PHONE #

3. I am \_\_\_\_\_ years old, having been born on \_\_\_\_\_. I can read and understand the English language and have completed the following level of education \_\_\_\_\_.

4. I have been advised by the above-named attorney and understand that I have a right to arraignment in open court, and I hereby voluntarily waive that right, choosing instead to sign this written arraignment and plea of not guilty. I understand that times for further proceedings which are computed from the date of arraignment will be computed from the date of filing this written arraignment and plea of not guilty.

5. I have received a copy of the indictment/trial information which charges me with the crime(s) CRIME(S) I have had read it read to me, and I have familiarized myself with its

contents.

6. With regard to the name by which I am charged in the indictment/trial information (either check "a" or check and complete "b"):

( ) a. The name shown on the indictment/trial information is my true name. I have been advised and understand that I am now precluded from objecting to the indictment/trial information upon the ground I am improperly named.

( ) b. The name shown on the indictment/trial information is not my true name. My true name is \_\_\_\_\_. I request that an entry be made in the Minutes showing my true name. I have been advised and understand further proceedings will be had against me by that name, the indictment/trial information will be amended accordingly, and when the indictment/trial information is so amended, I will be precluded from objecting upon the ground I am improperly named.

7. I have been advised and understand that I may plead (guilty), (not guilty), or former conviction or acquittal.

8. For the purpose of this arraignment, I have had sufficient time to discuss my case with the above-named attorney, and I waive any further time in which to enter a plea.

9. I plead NOT GUILTY to the charge(s) Count I: Theft in the Second Degree in violation of Iowa Code Count I: 714.2(2).

10. I have been advised and understand that I have a right under Rule 2.33(2)(b) of the Iowa Rules of Criminal Procedure to a trial within ninety days after indictment/filing of the trial information and (check either "a" or "b").

( ) a. I demand a speedy trial pursuant to Rule 2.33(2)(b).

( ) b. I waive my right to a speedy trial pursuant to Rule 2.33(2)(b).

11. I request that a trial date be promptly set pursuant to Rule 2.9 of the Iowa Rules of Criminal Procedure. My attorney and I will not be available for trial on the following days:

\_\_\_\_\_  
Defendant

STATE OF IOWA                    )  
  ) SS:



COUNTY OF \_\_\_\_\_ )

Subscribed, sworn to, and acknowledged before me by Brenda Sue Anderson on this \_\_\_\_\_ day of September, 2016.

\_\_\_\_\_  
Notary Public or other officer  
authorized to take and certify  
acknowledgments and administer  
oaths

**SAMPLE WRITTEN GUILTY PLEA**

**IN THE IOWA DISTRICT COURT, IN AND FOR DUBUQUE COUNTY**

<p><b>STATE OF IOWA,</b></p> <p style="text-align: center;"><b>Plaintiff,</b></p> <p><b>vs.</b></p> <p><b>DEFENDANT</b></p> <p><b>ADRESS</b></p> <p><b>DUBUQUE, IA 52001</b></p> <p><b>d.o.b.: X/XX/XXXX</b></p> <p style="text-align: center;"><b>Defendant.</b></p>	<p><b>01311 SRCRXXXXXX</b></p> <p><b>GUILTY PLEA AND WAIVER OF PRESENCE</b></p> <p><b>Charge(s) LIST ALL CHARGES INCLUDING CHARGES BEING DISMISSED</b></p>
---	--

**DEFENDANT'S SIGNATURE ACKNOWLEDGES THAT HE/SHE READ AND UNDERSTOOD EACH PARAGRAPH.**

1. I am charged in my true name, I understand the nature of the charge against me, and I wish to plead guilty to: **actual charges pleading guilty to, including amended charges with code section and subsection(s)**

2. I understand that I am innocent until proven guilty and that the State has to prove my guilt beyond a reasonable doubt; that I have a right to a speedy trial by jury and a right to be represented by an attorney at that trial; that if I cannot afford an attorney, the Court will appoint one for me at State expense subject to restitution by me; that I have a right to hear the evidence against me from the witnesses and to subject those witnesses to cross-examination; that I may testify in my own defense, or that I may refuse to testify, and that my refusal will not reflect on my guilt or innocence; that I have the right to produce witnesses to testify on my behalf and that I can compel them to appear at trial.

3. I understand I am waiving the above trial rights when I plead guilty.

4. I understand the maximum/minimum fines for the above charge(s) are as follows: **(show counts)**:

Max. fine: \_\_\_\_\_ \$6250/ \_\_\_\_\_ \$1875/ \_\_\_\_\_ \$1500 (DUS)/ \_\_\_\_\_ \$1250(OWI-1)/  
\_\_\_\_\_ \$1000 (DUR/PCS: Mari./ \_\_\_\_\_ \$625

Min. fine: \_\_\_\_\_ \$1250(OWI-1)/ \_\_\_\_\_ \$1875 (OWI-2)/ \_\_\_\_\_ \$1000 (DUR)/  
\_\_\_\_\_ \$625/ \_\_\_\_\_ \$315/ \_\_\_\_\_ \$250/ \_\_\_\_\_ \$65.

There is an added surcharge to any fine equal to 35% of the fine amount.

Max. term of incarceration: \_\_\_\_\_ 2 years/ \_\_\_\_\_ 1 year/ \_\_\_\_\_ 180 days (Poss of Marijuana)/ \_\_\_\_\_ 30 days

Min. term of incarceration: \_\_\_\_\_ 7 days (OWI-2)/ \_\_\_\_\_ 2 days (OWI-1;PCS; Ch708.2A simple/serious/ aggravated assault)

5. In addition to any other surcharge, a law enforcement surcharge (LEI) of \$125 will be added if the charge is in violation of Iowa Code Chapter 124, 155A, 453B, 713, 714, 715A or 716 or in violation of Iowa Code Section 719.7, 719.8, 725.1, 725.2 or 725.3. In addition to any other surcharges a DARE surcharge of \$10 will be added if the charge arises out of a violation of an offense provided for in Chapter 321J or Chapter 124, Division IV. In the event the Court defers judgment or suspends all fines and incarceration, the DARE surcharge will not apply.

6. At the time of the offense I was not under any mental disability, infirmity, or disease (other than the influence of alcohol, if so charged). I am not now under the influence of any drug, alcohol, narcotic or prescription medication.

7. There have been no promises or threats made to make me plead guilty, and I understand that this Court may sentence me to the maximum provided by law.

8. I am knowingly and voluntarily pleading guilty to the above charge(s) because I am guilty.

9. I understand that by signing this written plea I am giving up my right to have the judge explain these rights to me.

10. I agree the Minutes of Testimony are substantially correct or I did the following act(s) to commit this crime: the Court may rely on the minutes of testimony to establish a factual basis for this plea.

11. I understand that a criminal conviction, deferred judgment or deferred sentence in this case may affect my status in the United States under federal immigration laws. By my signature as set forth below, I acknowledge that I have been informed of the potential consequences of a plea or finding of guilty to my immigration status.

12. I understand if the above charge is a controlled substance offense under Section 124.401, 124.401A, 124.402 or 124.403 or is a drug or drug-related offense under Section 126.30 the Court must order the Department of Transportation to revoke defendant's driver's license or operating privilege for a period of 180 days which period will not begin until all other suspensions or revocations have terminated. In the event defendant has not been issued a license, the Court must order a delay in future issuance of a driver's license of 180 days to commence after defendant is first eligible for such issuance.

13. I understand plea negotiations to be:

**List plea negotiations including fines, applicable surcharge(s), or civil penalties, statutory sanctions (e.g.: driver's license suspension for drug offenses, or sex offender registry) be detailed in plea negotiation description including Counts and charges dismissed, concurrent or consecutive time**

**DEFENDANT WILL PAY ALL COURT COSTS, INCLUDING THOSE ON DISMISSED CHARGES.**

**DEFENDANT WILL PAY THE FOLLOWING COURT COSTS:** \_\_\_\_\_

---

**BUT the Court is NOT required to accept these negotiations.**

**I will pay judgment as follows:** \$50 / month. I have been informed that I must pay at least \$50 every month until the total amount is paid or the total amount can be sent to collections and 25% added to the total.

14. I understand I have a right to be personally present at my guilty plea and sentencing. I also understand the Court can insist upon my presence. I am informed of my right to a delay of at least 15 days from the acceptance of my plea to the day of sentencing and if I wish to challenge my guilty plea I must do so by filing a Motion in Arrest of Judgment which must be filed no later than 45 days from the date of this plea and no later than 5 days before sentencing. I am also informed my right to appeal this guilty plea will be lost if I fail to file a timely Motion in Arrest of Judgment prior to sentencing. I hereby waive the above rights.

I want to be sentenced immediately, without any presentence investigation report, whether I am present or not.

I want to be present for sentencing.

15. I understand that if the Court appointed an attorney for me, I have a right to a hearing regarding my ability to pay the attorney fees. I hereby waive my right to a hearing and waive my presence when the Court determines the amount I am reasonably able to pay. I am asking the Court to take into consideration the following when making this determination: Attached amended financial affidavit and/or

---

I ask the Court to accept my plea of guilty.

DATED: \_\_\_\_\_

\_\_\_\_\_  
DEFENDANT'S SIGNATURE

\_\_\_\_\_  
DEFT'S ATTORNEY'S SIGNATURE

\_\_\_\_\_  
PROSECUTOR'S SIGNATURE  
(w/o signature, the matter will be set  
for plea proceedings on 10:15 docket)

**Note:** for *Alford* plea use this language in Paragraph 10: **this is an *Alford* plea. I agree that there is strong evidence of my guilt and I am entering this plea to avoid a harsher sentence, and I want to take advantage of the plea offer which is to my benefit. I understand that even though I maintain my innocence, this plea is treated no differently than any other guilty plea.**

**SAMPLE MOTION FOR DISCOVERY**

**IN THE IOWA DISTRICT COURT, IN AND FOR DUBUQUE COUNTY**

<b>STATE OF IOWA,</b>  <b>Plaintiff,</b>  <b>vs.</b>  <b>DEFENDANT</b>  <b>Defendant.</b>	<b>01311 AGCRXXXXXX</b>  <b>MOTION FOR DISCOVERY</b>
---	--

COMES NOW, the Defendant, by and through his attorney and in support of his Motion for Discovery states:

1. This motion is made pursuant to the Iowa Rules of Criminal Procedure, Iowa Const. art. I §§ 9, 10 and U.S. Const. amends. VI, XIV.
2. Defendant is indigent and wishes to depose the State's witnesses.
3. Defendant requests that Defendant be apprised of and allowed to inspect and copy the following items related to this case:
  - a. All statements made by the Defendant.
  - b. The Defendant's criminal record.
  - c. Any evidence which is or may be exculpatory or favorable on the issue of Defendant's guilt or punishment. *United States v. Agurs*, 427 U.S. 97 (1976); *Brady v. Maryland*, 373 U.S. 83 (1963); and *State v. Johnson*, 272 N.W. 2d 480, 485 (1978).
  - d. Any evidence known to the State which is material to the credibility and reliability of any of the State's witnesses and promises made to them or benefits received by

- them for their testimony, including but not limited to disclosure of matters related to known prior felony convictions of witnesses, exculpatory matters, bargains made, contradictory statements, known bias, prejudice of witnesses, and decisions not to prosecute for known violations of the law. *Giles v. Maryland*, 386 U.S. 66 (1967) and *Giglio v. United States*, 405 U.S. 150 (1972).
- e. All witnesses' statements, including but not limited to police reports of Dubuque police officers, Dubuque County Sheriff's Deputies, or any other investigative agent of the State. Rule 2.14(2)(b)(1). *State v. Groscost*, 355 N.W.2d 32 (Iowa 1984).
  - f. All books, papers, documents, statements, photographs, audio and video tapes, or tangible objects which are within the possession, custody or control of the State, and which are material to the preparation of Defendant's defense, or are intended for use by the State as evidence at the trial, or were obtained from or belong to the Defendant.
  - g. Any results or reports of physical or mental examinations and results or reports of scientific tests or experiments made in connection with this case, including any material tested. *State v. Gabrielson*, 464 N.W. 2d 434, 436-437 (Iowa 1990).
  - h. Any other evidence which in the interest of justice need be disclosed in order for the Defendant to defend his case. *State v. Gabrielson*, 464 N.W. 2d 434, 437-438 (Iowa 1990).
4. Defendant further seeks an order compelling the State of Iowa to comply with its continuing duty to disclose under the Iowa Rules of Criminal Procedure.

5. Defendant further seeks an order setting a date certain for the State of Iowa to provide the discovery requested herein and warning the State that failure to comply with the Court's order will result in sanctions against the State.
6. Defendant hereby consents to reciprocal discovery as required by the Iowa Rules of Criminal Procedure and does not object to an order requiring the same.
7. Defendant has attempted to obtain the above information absent filing this motion and without seeking a court order. To date, the State has not provided the discovery. In fact, on June 21, 2016, the undersigned's office contacted the Dubuque County Sheriff's Office and was informed that without a court order the undersigned's office could not view physical evidence that was seized in this matter.

WHEREFORE, Defendant respectfully requests that the Court grant this motion, and order the State to provide the requested information immediately.

Respectfully submitted,  
DEFENDANT, Defendant

By: */s/ Steven J. Drahozal*  
Steven J. Drahozal, ATP310006  
ASSISTANT PUBLIC DEFENDER  
590 Iowa St. Ste. 1  
Dubuque, IA 52001  
(563) 582-0750 (Telephone)  
(563) 582-3576 (Facsimile)  
[sdrahozal@spd.state.ia.us](mailto:sdrahozal@spd.state.ia.us) (e-mail)

# 2016 Nuts & Bolts Seminar Johnston (Central Iowa)



## LITIGATION TRACK General Personal Injury

**4:15 p.m.- 5:00 p.m.**

**Presented by**

Nate Boulton

Hedberg & Boulton P.C.

100 Court Avenue, Suite 425

Des Moines, IA 50309

Phone: 515-288-4148



**THURSDAY, OCTOBER 20, 2016**



# **Personal Injury:**

## **Key Considerations for Trial Practice**

Presented by

**Nate Boulton**

HEDBERG & BOULTON  
100 Court Avenue, Suite 425  
Des Moines, IA 50309  
Tel: (515) 288-4148

1. Client Intake
  - a. Claim Identification and Spotting Defenses
    - i. Personal Injury, Products Liability, Workers' Compensation, Social Security Disability, etc.
    - ii. Anticipating Costs
    - iii. Meeting the elements, Comparative Fault
    - iv. Setting expectations
  - b. Contract Considerations
2. Letter of Representation
3. Claim investigation
  - a. Medical Records/Doctor Conferences, Accident Reports, Witness Statements/Affidavits
4. Valuing the Case and Expedited Civil Actions Option
5. Settlement Discussions
6. Petition
7. Discovery
  - a. Interrogatories
  - b. Requests for Production
  - c. Subpoenas
  - d. Admissions
  - e. Depositions
  - f. Motions
8. Building your case to tell a story
  - a. Witnesses
  - b. Experts
  - c. Exhibits
9. Trial Considerations
  - a. Jury Instructions
  - b. Jury Selection
  - c. Opening Argument
  - d. Witnesses
  - e. Closing

# ***TRANSACTIONAL TRACK***

## ***12:30-5:00 P.M.***

### ***Caveat***

*The printed materials contained in this book and the oral presentations of the speakers are not intended to be a definitive analysis of the subjects discussed. The reader is cautioned that neither the program participants nor The Iowa State Bar Association intends that reliance be placed upon these materials in advising your clients without confirming independent research.*

# 2016 Nuts & Bolts Seminar Johnston (Central Iowa)



## **TRANSACTIONAL TRACK** **Business Formation:** **A Basic Understanding**

**12:30 p.m.- 1:30 p.m.**

**Presented by**

Rachel Parker

Nyemaster Goode, PC

700 Walnut St., Ste. 1600

Des Moines, IA 50309

Phone: 515-283-8014



**THURSDAY, OCTOBER 20, 2016**

## BUSINESS FORMATION: A BASIC UNDERSTANDING

### RACHEL PARKER

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Attorneys at Law | Offices in Des Moines, Ames and Cedar Rapids



**RACHEL PARKER** is a member of Nyemaster Goode's Business, Finance, and Real Estate Department. Rachel assists clients from formation to the sale or other wind up of their businesses and with everything in between.

## Disclaimer

**The following presentation does not represent legal advice. If you have specific questions concerning specific circumstances, please consult your attorney.**

## General Advice

### ➤ **Build a team (not working in a vacuum):**

- Organizers/key business personnel
- Accounting
- Financial/Banking
- Risk Management/Insurance
- Legal (other lawyers in your firm)
- Special technical expertise (e.g., regulatory, IP counsel)

### ➤ **Remember the “counseling” part of your profession**

## Principal Selection Considerations

- Liability protection
- Ownership structure
- Governance/management structure
- Capital structure (including P&L allocations, distributions)
- Income and other tax considerations
- Future transfers of the business or attracting investors



## Business Structures

- Sole Proprietorship
- Limited Liability Company
  - ✓ Single member
  - ✓ Multi-member
- Corporations
  - ✓ C Corp
  - ✓ S Corp
- Partnerships
  - ✓ General (including LLP)
  - ✓ Limited Partnership (including LLLP)

## Sole Proprietorship

- No filing required – single person carrying on business for profit
  - If using trade name, county filing required (I.C.A. Ch. 547)
- No entity-specific limited liability (insurance)
- One owner; one decision-maker; one person for allocations/distributions
- Own all business assets in personal name
- Owe all business liabilities personally
- All income is taxed to owner individually and reported on Schedule C of owner's personal income tax return
- To transfer the business, each individual asset must be transferred and each separate liability assumed
- Consider single member LLC as alternative (not helpful for torts)

## Limited Liability Companies

- Governing Documents
  - ✓ Certificate of Organization
  - ✓ Operating Agreement
  - ✓ Buy-Sell Agreement
- Liabilities owed solely by LLC (absent piercing or personal guaranties)
- Ownership
  - ✓ Single Member LLC (one member, individual or entity)
  - ✓ Multi-Member LLC (as many as wanted, individuals or entities)
  - ✓ Assets owned by LLC
- Governance
  - ✓ Member or manager managed
  - ✓ Officers may be named

## LLCs (cont'd)

- Each member has membership interest (including transferable interest)
- Consider representing interest by “Units”
- Membership interest = all rights as member in Company
- Transferable Interest = economic rights
  - ✓ Can be subjected to a Charging Order by a judgment creditor.
  - ✓ Charging Order creates “lien” on Transferable Interest then can be foreclosed.

## LLCs (cont'd)

- For income tax purposes, single-member LLC is a “disregarded entity.” As a result, all income is taxed to the member and reported on the member’s income tax return
- Multi-member LLC is usually taxed as a partnership so that income flows through to the members’ income tax return and taxed at the members’ income tax rate
- Multi-member LLC – flexible for distributions and allocations
- Multi-member LLC needs EIN. Single-member LLC must have EIN if it has employees and pays wages
- LLC (including single-member) also generally recognized for other taxes (e.g., state sales and use taxes).

## LLCs (cont'd)

- To transfer the business, can transfer assets or interests (Units)
- Buy-sell:
  - Restricted Transfers
  - Permitted Transfers
  - Voluntary Transfers
  - Involuntary Transfer Events
  - Purchase Price and Payment
  - Consider Mandatory Buy-Sell/Deadlock
  - Drag/Tag/Put/Call
  - Boilerplate

## Corporations

- Governing Documents
  - ✓ IBCA (less flexibility than RULLCA)
  - ✓ Articles of Incorporation
  - ✓ Bylaws
  - ✓ Shareholders' Agreement
- Limited Liability
- Owners are shareholders – ownership interest represented by shares
- Governance: Board, Officers, Shareholder Voting, Dissenter's Rights

## C Corporations

- Name refers to election to be taxed at corporate level under Internal Revenue Code subchapter C
- Classic corporate entity. Common example is a publicly traded company
- Many shareholders
- Double taxation creates tax inefficiency
  - ✓ Income is taxed first at the corporate level (1<sup>st</sup> level tax)
  - ✓ Dividends paid to shareholders from corporate income are taxed at the shareholders' tax rates (2<sup>nd</sup> level tax)



## S Corporations

- Limitations on shareholders
  - ✓ Cannot have more than 100 shareholders
  - ✓ Only individuals, estates, certain trusts and certain tax-exempt organizations can be shareholders. No “nonresident alien” shareholders
- Limitations on stock
  - ✓ Only one class of stock, but can have voting and nonvoting shares
- File election to be subject to Subchapter S of Internal Revenue Code
- All shareholders must join in election
- Income must be distributed on a pro-rata basis based on ownership.
- Income flows through to the shareholders and is taxed at the shareholders’ tax rates

## Shareholder Agreement

### ➤ Shareholder Agreement

- Buy-Sell Provisions
- Voting Agreements
- Matters Requiring Stockholder Approval/Supermajority
- Confidentiality
- Non-Compete
- Guaranties/Contribution
- Preemptive Rights
- Registration Rights

## Partnerships

- Generally similar to LLC, except...
- No required filing (or intent) – occurs by 2 or more persons associating to carry on a business for profit; For LLP – file statement of qualification
- Liabilities are owed by the partnership and general partners jointly and severally (but no liability for LLP)
- Partnership Agreement – similar to Operating Agreement, can modify many statutory defaults, except ability to dissociate
- By default, all partners have authority to bind partnership
- Partnership automatically dissolves upon certain events

## Limited Partnerships

- Generally similar to LLC, except...
- Certificate of Limited Partnership (or LLLP) required
- At least one general partner – sole governance control, only authority to bind
- General partners have joint and several liability with LP (unless LLLP)
- In Iowa, limited partners can participate in management of the LP to certain extent and retain liability protection

## S Corp v. LLC

- Eligible Owners
  - ✓ S Corp owners must be “eligible shareholders”
  - ✓ No restriction on entity types that can be LLC members
- Income/Loss/Distribution Allocations
  - ✓ S Corp pro rata based on ownership percentage
  - ✓ LLCs can use special allocations as long as allocation has substantial economic effect. “Substantial economic effect”:  
Application of complicated rules that require, generally, allocations to be consistent with underlying economic agreement of members and be substantial, i.e., affect substantially amounts received by members independent of tax consequences.

## S Corp v. LLC (cont'd)

- Cash Distributions
  - ✓ Not taxable to extent of basis for both S Corp and LLC
- Property
  - ✓ S Corp: Gain recognized by S Corp on distribution of appreciated property; gain passed through to shareholders for basis adjustment
  - ✓ LLC: No gain or loss recognized by partnership on distribution of property and so none passed through to members. Property has carryover basis in hands of members
- Self Employment Tax
  - ✓ S Corp: Salary of employee shareholder subject to SE tax. Distributions on stock are not subject to SE tax.

## S Corp v. LLC (cont'd)

- Self Employment Tax (cont'd)
  - ✓ LLC:
    - General partner subject to self-employment tax
    - Limited partner is not. Generally classified as a limited partner unless:
      - Personal liability for the partnership
      - Authority to contract on behalf of the partnership
      - Participate in the partnership trade or business for more than 500 hours per year

# Questions?



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**BUSINESS FORMATION: A BASIC UNDERSTANDING**

**RACHEL PARKER**

Direct Number: (515) 283-8014 | Facsimile: (515) 283-8045 | E-Mail: rparker@nyemaster.com  
700 Walnut, Suite 1600 | Des Moines, IA 50309-3899 | (515) 283-3100

Attorneys at Law | Offices in Des Moines, Ames and Cedar Rapids



**RACHEL PARKER** is a member of Nyemaster Goode's Business, Finance, and Real Estate Department. Rachel assists clients from formation to the sale or other wind up of their businesses and with everything in between.

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**Disclaimer**

**The following presentation does not represent legal advice. If you have specific questions concerning specific circumstances, please consult your attorney.**

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**General Advice**

➤ **Build a team (not working in a vacuum):**

- Organizers/key business personnel
- Accounting
- Financial/Banking
- Risk Management/Insurance
- Legal (other lawyers in your firm)
- Special technical expertise (e.g., regulatory, IP counsel)

➤ **Remember the “counseling” part of your profession**

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### Principal Selection Considerations

- Liability protection
- Ownership structure
- Governance/management structure
- Capital structure (including P&L allocations, distributions)
- Income and other tax considerations
- Future transfers of the business or attracting investors

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### Business Structures

- Sole Proprietorship
- Limited Liability Company
  - ✓ Single member
  - ✓ Multi-member
- Corporations
  - ✓ C Corp
  - ✓ S Corp
- Partnerships
  - ✓ General (including LLP)
  - ✓ Limited Partnership (including LLLP)

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### Sole Proprietorship

- No filing required – single person carrying on business for profit
  - If using trade name, county filing required (I.C.A. Ch. 547)
- No entity-specific limited liability (insurance)
- One owner; one decision-maker; one person for allocations/distributions
- Own all business assets in personal name
- Owe all business liabilities personally
- All income is taxed to owner individually and reported on Schedule C of owner's personal income tax return
- To transfer the business, each individual asset must be transferred and each separate liability assumed
- Consider single member LLC as alternative (not helpful for torts)

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**Limited Liability Companies**

- Governing Documents
  - ✓ Certificate of Organization
  - ✓ Operating Agreement
  - ✓ Buy-Sell Agreement
- Liabilities owed solely by LLC (absent piercing or personal guaranties)
- Ownership
  - ✓ Single Member LLC (one member, individual or entity)
  - ✓ Multi-Member LLC (as many as wanted, individuals or entities)
  - ✓ Assets owned by LLC
- Governance
  - ✓ Member or manager managed
  - ✓ Officers may be named

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**LLCs (cont'd)**

- Each member has membership interest (including transferable interest)
- Consider representing interest by "Units"
- Membership interest = all rights as member in Company
- Transferable Interest = economic rights
  - ✓ Can be subjected to a Charging Order by a judgment creditor.
  - ✓ Charging Order creates "lien" on Transferable Interest then can be foreclosed.

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**LLCs (cont'd)**

- For income tax purposes, single-member LLC is a "disregarded entity." As a result, all income is taxed to the member and reported on the member's income tax return
- Multi-member LLC is usually taxed as a partnership so that income flows through to the members' income tax return and taxed at the members' income tax rate
- Multi-member LLC – flexible for distributions and allocations
- Multi-member LLC needs EIN. Single-member LLC must have EIN if it has employees and pays wages
- LLC (including single-member) also generally recognized for other taxes (e.g., state sales and use taxes).

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### LLCs (cont'd)

- To transfer the business, can transfer assets or interests (Units)
- Buy-sell:
  - Restricted Transfers
  - Permitted Transfers
  - Voluntary Transfers
  - Involuntary Transfer Events
  - Purchase Price and Payment
  - Consider Mandatory Buy-Sell/Deadlock
  - Drag/Tag/Put/Call
  - Boilerplate

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### Corporations

- Governing Documents
  - ✓ IBCA (less flexibility than RULLCA)
  - ✓ Articles of Incorporation
  - ✓ Bylaws
  - ✓ Shareholders' Agreement
- Limited Liability
- Owners are shareholders – ownership interest represented by shares
- Governance: Board, Officers, Shareholder Voting, Dissenter's Rights

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### C Corporations

- Name refers to election to be taxed at corporate level under Internal Revenue Code subchapter C
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### Questions?

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# 2016 Nuts & Bolts Seminar Johnston (Central Iowa)



## TRANSACTIONAL TRACK Real Estate 101

**1:30 p.m.- 2:45 p.m.**

**Presented by**

Tim Gartin

Hastings, Gartin & Boettger, LLP

409 Duff Ave.

Ames, IA 50010

Phone: 515-232-2501



**THURSDAY, OCTOBER 20, 2016**



# Introduction to Iowa Residential Real Estate Transactions

Nuts & Bolts 2016  
Timothy L. Gartin  
Hastings, Gartin & Boettger, LLP  
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II. Installment contracts	4
III. Warranty deeds	4
IV. Overview of title examination	6
V. Curing title problems	32
VI. Closing residential real estate transactions	36
List of exhibits	52

## **I. Purchase Agreements**

### **A. Overview of the purchase agreement and required disclosures**

1. The terms. See handout.
2. Common mistakes.
3. Conflict of interests. In Iowa, an attorney cannot represent both

the buyer and seller in the same transaction without a written waiver of the conflict of interest.<sup>1</sup> Neither the Courts nor the Iowa Bar Association have approved a particular form, but the included waiver is a form developed to follow the current law. (See Exhibit 1.)

### **B. Advising sellers**

Goal of meeting: To **understand** the clients' intended transaction and to equip them with the knowledge and documents needed to get started with selling their real estate.

---

<sup>1</sup> See Iowa Rule of Professional Conduct 32.

1. Information gathering.
  - a. Name(s), current address, phone number, e-mail, and SSN;
  - b. Address of real estate being sold if not the same;
  - c. Length of time they have owned the real estate (2 years during the last 5 to avoid cap. gains);
  - d. Forwarding address;
  - e. Status of next transaction; implications for the sale;
  - f. What has been done so far;
  - g. Time frame for selling the real estate;
  - h. Special considerations (e.g., spouse leaving the country tomorrow; divorce).
  
2. Overview of the process.
  
3. Methods of setting the price for the real estate.
  
4. Projecting the net proceeds. (See Exhibit 2.)
 

\$ _____	Sales price
Less	
\$ _____	Mortgage payoff(s)
\$ _____	Property taxes (approx. 1 year)
\$ _____	Abstracting
\$ _____	Transfer tax
\$ _____	Attorney fees
\$ _____	Realtor's commission (if any, not adjusted for closing cost credit)
\$ _____	Credit (if any) for buyers' closing costs
\$ _____	Wire transfer / overnight for payoff
Equals	
\$ _____	Projected net proceeds
  
5. Required disclosures.
  - a. Residential sellers' disclosure

- b. Lead paint
- c. Radon

### C. Advising buyers

Goal of meeting: To understand the clients' intended transaction and to equip them with the knowledge and documents needed to get started with buying real estate, especially how to work with lenders.

1. Information gathering.
  - a. Name(s), current address, phone number, e-mail, and SSN;
  - b. Address of real estate being purchased;
  - c. Status of negotiations;
  - d. Contingencies needed – *E.g.*, financing (the interest rate as floor or ceiling, what “pre-approval” means and does not mean) and sale of existing real estate (status?)
  - e. Special considerations (*e.g.*, spouse leaving the country tomorrow; divorce).
2. Overview of the process.
3. Review of purchase agreement and required sellers' disclosures.
4. Introduction to financing the transaction.
  - a. How to select a lender and the lost value of prudence;
  - b. The Loan Estimate (LE);
  - c. Review the Closing Disclosure (CD) **3 business days** prior to closing and compare it to the LE;
  - d. What to expect in the closing.

## II. Installment Contracts

Discuss with Sellers the risks of selling real estate by installment contract (*e.g.*, forfeiture vs. foreclosure; and the lack of information about the prospective buyers).

### A. Overview of the installment contract

#### 1. Documents needed.

a. Installment contract (be sure to clarify the rights of payment and forfeiture);

b. Escrow for deed and abstract agreement (*See* Exhibit 3.);

c. Warranty deed in fulfillment of contract.

#### 2. The process.

a. Title work. If the intended sellers are themselves buying the real estate on contract, you need to review their underlying contract to verify their ability to enter into this contract and whether there would be any barriers to providing clear title when the new contract balloons.

b. Draft the documents.

c. Closing the transaction. Note that the contract must be recorded within 90 days of execution.<sup>2</sup>

Practice pointer. Transfer tax is not paid until the deed is recorded. Show the amount on the Closing Disclosure for reference.

## III. Drafting warranty deeds

### A. Overview of the warranty deed

1. The terms. *See* Exhibit 4 for a warranty deed form.

2. Common mistakes.

3. Notary forms. 9B.16. Short forms

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<sup>2</sup> *See* Iowa Code § 558.46. Failure to record within 90 days results in a fine of not to exceed \$100 per day and the loss of forfeiture as a remedy.

The following short form certificates of notarial acts are sufficient for the purposes indicated, if completed with the information required by section 9B.16, subsection 1. Note that the acknowledgement should *not* recite the marital status as this is not something required under Iowa Code § 9B.5. The Bar form for the warranty deed has recently been modified to remove the recital of marital status.

1. For an acknowledgment in an individual capacity:

State of \_\_\_\_\_  
(County) of \_\_\_\_\_

This record was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_ by  
\_\_\_\_\_.

(Seal, if any) \_\_\_\_\_  
(signature of notarial officer)  
\_\_\_\_\_  
Title (and Rank)  
[My commission expires: \_\_\_\_]

2. For an acknowledgment in a representative capacity:

State of \_\_\_\_\_  
(County) of \_\_\_\_\_

This record was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_ by  
\_\_\_\_\_ (name(s) of person(s)) as  
\_\_\_\_\_ (type of authority, *e.g.*, officer, trustee, etc.) of  
\_\_\_\_\_ (name of party on behalf of whom instrument was  
executed).

(Seal, if any) \_\_\_\_\_  
(signature of notarial officer)  
\_\_\_\_\_  
Title (and Rank)  
[My commission expires: \_\_\_\_]

#### IV. Overview of title examination

##### A. Preliminaries

1. The attorney's attitude in examining abstracts of title. Iowa Land Title Standard 1.1 provides:

Standard: The purpose of the examination of title should be to secure a title for the examiner's client which is in fact marketable and which is shown by the record to be marketable, subject to no encumbrances other than those expressly provided for by the client's contract. Objections and requirements should be made only when the irregularities or defects can reasonably be expected to expose the purchaser or lender to the hazard of adverse claims or litigation. To render the title to land unmarketable, there must be a reasonable probability of litigation. The mere bare possibility or remote probability that there may be litigation with respect to the title is not sufficient to render it unmarketable.

Comments: Title Standards are primarily intended to eliminate technical objections which do not impair marketability and some common objections which are based upon misunderstandings of the law. The examining attorney, by way of a test, may ask after examining the title what defects and irregularities have been discovered by the examination and, as to each such irregularity or defect, who, if anyone, can take advantage of it as against the purported Owner and to what end. *The examining attorney should be prepared, prior to objecting to title, to identify who would have standing to file a claim or commence good faith litigation challenging title, and the grounds for such claim or litigation.*

2. Anatomy of an abstract. An abstract will include a caption, abstracted entries, certifications for each continuation showing no gaps in the periods searched, and addendum entries. Under the Marketable Title Act,<sup>3</sup> abstractors may produce abbreviated abstracts.

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<sup>3</sup> See Iowa Code § 614.29-.38.

3. Legal description. The legal description should sufficiently describe what property is being conveyed. (A conveyance using an insufficient legal description is considered void for uncertainty.) If you have a metes and bounds description in the caption, you should be able to draw a diagram of the property. *See* handout. Express the legal description in as simple a form as possible to reduce the likelihood of scrivener errors. It is a good practice to read metes and bounds descriptions aloud with someone else to compare the captioned legal description from the most current continuation with the legal description used in the title opinion. In addition, legal descriptions using a plat of survey and condominiums have particular forms that need to be observed. Encourage the use of plat of survey legal descriptions over metes and bounds descriptions.

4. Pencil notes. Some abstractors prepare a continuation by photocopying the documents that have been filed since the last continuation and then abstracting all the documents after the closing. Be aware that pencil notes are not an abstract. Some attorneys will photocopy or scan the pencil notes to document what they examined when rendering a preliminary title opinion given the fact that those pencil notes will no longer be accessible. The attorney should reserve the right to re-examine the abstract once the pencil notes have been incorporated in the abstract.

5. Taking notes. See the separate handout for an example of how notes may be taken. Good notes will be invaluable when there are questions about your work in the future. As you take notes, avoid being sidetracked with researching issues that may in fact be resolved later in the abstract. If you do have a title objection, take thorough notes for future reference and make photocopies of abstract entries if needed.

Practice pointer. The 40-year chain of title is a requirement for all real estate described in the caption.<sup>4</sup> If real estate is added to the caption (*e.g.*, a city vacating an alley), the abstract must include a root of title for that additional real estate if a title opinion is to be rendered on all of the real estate being conveyed. (Pursuant to Iowa Code § 364.7, a conveyance of an interest in real estate from a municipality requires a

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<sup>4</sup> *See* the Marketable Title Act (Iowa Code § 614.29-.38).

showing of (1) the resolution of the city council to sell the property, (2) proof of publication of the notice, and (3) the resolution of the council following the hearing.) To obtain a Title Guaranty policy, the legal description used in the appraisal and the title opinion must agree. Thus, if an 8-foot strip from a vacated alley does not affect the property value, then the owner *could* forego adding the root of title to the abstract for the 8-foot strip. (This is not recommended because the buyers are provided with an abstract that does not cover all of the real estate being conveyed, probably contrary to the purchase agreement.) Conversely, if a garage now sits on the 8-foot strip, this will likely require consistency between the title work and the appraisal.

Practice pointer. Be aware that some abstractors exclude land used for public highways from the legal description based on the mistaken belief that a lien search would be required against the government entity that has the road rights. It is unnecessary to perform a lien search against entities holding only an easement interest because liens do not attach to easement interests. Once the abstractor has excepted the road from the legal description, it is a simple matter for the defective legal to be used as the legal description for subsequent conveyances, thereby leaving the grantors owning real estate used for road purposes. This often requires corrective deeds from people long removed from the property.

Practice pointer. Generally, only abstractors should write in an abstract. Some attorneys will indicate the particular lot in an easement entry or underline spelling errors. In the event errors are discovered in the abstract, it is a better practice to bring them to the attention of the abstractor and have the entry amended by an abstractor's certified amendment. The abstractor should not modify an abstract without informing the examining attorney.

Practice pointer. Make sure that when you refer to the legal description of an abstract that you use the legal description from the most recent continuation. There may have been changes to the legal description over time that are not reflected in the cover page.



Practice pointer. An attorney who wishes to develop an abstract examination practice should maintain a computer-based abstract log that records the details of abstracts entering and leaving the office. *See* Exhibit 5 for a sample abstract log sheet.

Practice pointer. You are encouraged to develop a 3-ring binder to maintain your set of the Iowa Title Standards. This will allow you to organize relevant cases, statutory sections, etc., along with the appropriate Title Standard. The Title Standards are available on the Iowa Bar website ([www.iowabar.org](http://www.iowabar.org)).

6. A video which goes into more detail on abstract examination is available on the Iowa Bar Association website.

## **B. Title opinion letter forms.**

1. Attorneys should draft title opinions that are well organized (*e.g.*, using headings); such title opinions assist lenders, realtors, and other attorneys in resolving title defects. Entries should provide enough information (*i.e.*, the recording date and book and page or instrument number, or case number) so that another attorney could obtain necessary documents or communicate with a recorder about a recorded document or a clerk of court about a referenced case conveniently. Be generous with suggestions about how to address title defects.

2. A computer form will serve as a checklist for drafting the title opinion. *See* Exhibits 6 and 7 for sample forms of preliminary and final title opinions. A reference of other paragraphs is helpful for objections that are less common. *See* Exhibit 8 for other sample paragraphs.

Practice pointer. You should have a well-organized database on your computer for accessing your title opinions. Some attorneys use a numerical indexing system; others create folders on their computer desktop for each lender, and within each lender's file, organize by year. Regardless of the system, be organized so that if you receive a telephone call regarding a title opinion, you can quickly access it.

**C. Issues relative to particular entity ownership**

1. Partnerships. Conveyances from partnerships are governed by Chapter 12 of the Title Standards. Title Standard 12.1 states:

Real property acquired by a partnership and held in the partnership name may be conveyed only in the partnership name. Any conveyance from the partnership so made and signed by one or more members of the partnership, which conveyance appears to be executed in the usual course of partnership business, shall be presumed to be authorized by the partnership in the absence of knowledge of acts indicating a lack of authority and the recitals in the instrument of conveyance shall be accepted as sufficient evidence of such authority.

*See also* Title Standard 12.2. Title Standard 10.7 was revised March 2014 as follows:

To what extent may Iowa Code § 614.14A be relied upon as a statute of limitations to bar claims seeking to invalidate a deed or real estate contract by a corporation, limited liability company, partnership, cooperative or association based on the allegation that the execution of the instrument was not authorized by the entity?

Standard:

If a deed or real estate contract was recorded prior to July 1, 2013, an action seeking to invalidate the instrument based on the allegation that it was not authorized by the entity is barred after June 30, 2018.

If a deed or real estate contract was recorded on or after July 1, 2013, an action seeking to invalidate the instrument based on the allegation that it was not authorized by the entity is barred after two years from the date of recording of the instrument.

2. Corporations.

a. Authority to convey. There is a presumption that a corporation is authorized to convey real estate.<sup>5</sup> However, if the abstract reports the articles of incorporation, the examining attorney should note any limitations on the authority to convey real estate.<sup>6</sup>

b. Foreign corporations. No additional showing is required.<sup>7</sup>

c. Corporate seals. For a corporation having a seal, it may, but need not be attached to the deed.<sup>8</sup> A deed does not need to recite that a corporation does not have a seal.<sup>9</sup>

3. Limited liability companies.

a. Prior to the recent changes to the Iowa Code Chapter 489, limited liability companies were treated the same way as corporations for conveying real estate. Title Standard 15.3 has been revised as follows:

**15.3 PROBLEM:**

**Rev. 3/14**

If an instrument affecting real estate is executed by a limited liability company, is it necessary to obtain a showing from its certificate of organization, operating agreement, or a duly authorized company resolution that the individual who executed the instrument was authorized to do so?

**STANDARD:**

**NOTE:** There are two standards that follow. Because of substantive Iowa Code amendments that became effective on July 1, 2013, there is a standard applicable to instruments executed on or after July 1, 2013, and a different standard applicable to instruments executed prior to July 1, 2013.

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<sup>5</sup> Title Standards 3.1 and 3.3.

<sup>6</sup> *Id.*

<sup>7</sup> Title Standard 3.2.

<sup>8</sup> Iowa Code § 558.2.

<sup>9</sup> Iowa Code § 558.3.

### **FOR INSTRUMENTS EXECUTED ON OR AFTER JULY 1, 2013:**

No. However, if the limited liability company's certificate of organization, operating agreement, statement of authority or a duly authorized company resolution are shown in the abstract, the examiner is bound to take notice of any limitations contained in any such documents with respect to the powers of the individual to execute the instrument on behalf of the company.

Authority:

Iowa Code § 489.407 (2013)

2013 Iowa Acts (85 G.A.), ch. 108, § 2 (amending Iowa Code § 489.302)

2013 Iowa Acts (85 G.A.), ch. 108, § 4 (to be codified as Iowa Code § 489.407A)

2013 Iowa Acts (85 G.A.), ch. 108, § 5 (to be codified as Iowa Code § 558.72)

### **FOR INSTRUMENTS EXECUTED PRIOR TO JULY 1, 2013:**

Real property acquired by a limited liability company ("LLC") and held in the LLC name may be conveyed only in the LLC name. Any conveyance from an LLC that is managed by its members so made and signed by a majority of the members and containing a recitation that the conveyance is being made in the ordinary course of the LLC's business or affairs shall be presumed to be authorized by the LLC in the absence of knowledge of acts, facts, or restrictions indicating a lack of authority. Any conveyance from an LLC that is managed by managers so made and signed by a majority of the managers and containing a recitation that the conveyance is being made in the ordinary course of the LLC's business or affairs shall be presumed to be authorized by the LLC in the absence of knowledge of acts, facts, or restrictions indicating a lack of authority.

The record must disclose: (1) whether the LLC is member-managed or manager-managed; (2) whether the conveyance is in the ordinary course of LLC's business or affairs; and (3) the authority of the signer to act on behalf of the LLC.

Absent actual or constructive knowledge to the contrary, and unless a properly filed and recorded Statement of Authority contradicts any of the following showings, evidence of the foregoing matters may be provided of record by one or more of the following: (a) the LLC's written operating agreement; (b) a duly filed and recorded Statement of Authority ; (c) an affidavit signed by a person with knowledge; or (d) a recitation contained in the instrument of conveyance (including the acknowledgement of such instrument). Any instrument of conveyance signed by the person or persons (whether members, managers, or officers) so authorized of record shall be presumed to be authorized by the LLC. If the transaction is not in the ordinary course of business, the consent of all members is required.

Authority:

Iowa Code §§ 489.407(1) and .302 (2013), prior to the enactment of 2013 Iowa Acts (85 G.A.), ch. 108, H.F. 566.

**COMMENT:**

Iowa Code Chapter 489 (2009) enacts the Revised Uniform Limited Liability Company Act. After January 1, 2011, Chapter 489 governs LLCs. Effective on July 1, 2013, a number of provisions of the Iowa Code relating to LLCs were amended, including §§ 489.302, 489.407, 489.407A, 558.72 and 614.14A. 2013 Iowa Acts (85 G.A.), ch. 108, H.F. 566.

Real property acquired by a limited liability company (“LLC”) and held in the LLC name may be conveyed only in the LLC name. An LLC may be either member-managed or manager-managed. An instrument of conveyance on behalf of an LLC is authorized either: (a) as provided in the operating agreement, (b) as provided in a statement of authority filed with the Secretary of State and county recorder, or (c) with consent of all members in a member-managed LLC or consent of a majority of all managers in a manager-managed LLC. 2013 Iowa Acts (85 G.A.), ch. 108, § 4 (to be codified as Iowa Code § 489.407A).

One of the 2013 amendments was the addition of statutory warranties providing that an instrument of conveyance from an LLC, unless clearly and conspicuously provided to the contrary in the instrument, includes a warranty to the transferee by the person executing the instrument that the person executing the instrument has been duly authorized by the LLC and has the legal capacity to execute the instrument. 2013 Iowa Acts (85 G.A.), ch. 108, § 5 (to be codified as Iowa Code § 558.72). The title examiner may rely upon the statutory warranties as if such warranties were set forth in writing in the conveyance instrument itself.

2013 Iowa Acts (85 G.A.), ch. 108, § 6 (to be codified as Iowa Code § 614.14A) provides a statute of limitations barring claims seeking to invalidate a deed or real estate contract by an LLC based on the allegation that the execution of the instrument was not authorized by the LLC. See Title Standard 10.7 and Comment.

b. Foreign limited liability companies. No additional showing is required.<sup>10</sup>

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<sup>10</sup> Title Standard 15.2.

4. Municipal corporation,<sup>11</sup> a county,<sup>12</sup> or school district.<sup>13</sup>
- a. Required showing. The following must be shown of record:
  - 1) The resolution to sell the property,
  - 2) Proof of publication of the notice, and
  - 3) The resolution of the entity following the hearing.

5. Trusts. Unlike conveyances from a corporation or limited liability company, a deed executed by a trustee must be accompanied by affidavits from both the grantor and grantee pursuant to Iowa Code § 614.14. *See* Exhibits 9 and 10 for forms. Section 616.14(7) was added to resolve a division of opinion as to the effect of a conveyance to a *trust* rather than a *trustee*. Subsection 7 states: “An interest in real estate currently or previously held of record by a trust shall be deemed to be held of record by the trustee of such trust.”

Practice pointer. Some lenders are not accustomed to loaning money where a trustee owns the real estate. Hopefully this will change over time, especially as people increasingly use trusts in their estate planning. However, in the meantime, lenders may ask for the real estate to be conveyed from the trustee to the individual (often the settlor), before giving the new mortgage, and then re-convey the real estate to the trustee. Borrowers should be advised that the return conveyance may violate the terms of a due-on-sale clause in the mortgage, and therefore they should obtain written permission from the mortgagee to make the transfer back to the trustee. (This principle applies to parallel conveyances in and out of any entity.) If the lender will loan money to the trustee, they may ask for an attorney to review the trust to verify that the trustee has the right to loan money and give a mortgage. The better practice is to use a Certification of Trust as provided by Iowa Code § 633A.4604. *See* Exhibit 11.

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<sup>11</sup> Iowa Code § 364.7. *See also* Marshall §§ 17.2(c) and 17.2(c)(2) and Title Standard 2.1.

<sup>12</sup> Iowa Code § 331.361.

<sup>13</sup> Iowa Code § 297.22 *et seq.*

6. Churches. It is prudent to require a showing of the authority of those acting on behalf of a church or other religious organization when conveying real estate.<sup>14</sup> An affidavit is provided at Exhibit 12.

**D. Marital property conveyancing.**

1. Marital status. A deed needs to recite the marital status of individual grantors. *See* Title Standard 5.3. If the deed was recorded over ten years ago without a recital of the marital status, no further showing is required unless a suit has been commenced or a claim has been filed in accordance with Iowa Code § 614.15. An affidavit verifying the marital status of the grantors is included as Exhibit 13. The marital status of the mortgagor(s) must also be shown on a mortgage.<sup>15</sup> A similar affidavit is included as Exhibit 14.

2. Conveyance by power of attorney. A conveyance by a person on behalf of their spouse by virtue of a power of attorney no longer needs to recite the legal description of the real estate if the real estate is their homestead property.<sup>16</sup> However, there should be a recital that the spouse is alive and, if the power of attorney is not durable, a recital that the spouse is not under disability.

**E. Conveying real estate in the course of a dissolution of marriage.**

1. Conveying real estate before the decree is entered. When a couple is going through a dissolution of marriage, a deed must recite that the grantors are husband and wife until the dissolution decree is entered. It is prudent to provide two notary sections in such a situation to facilitate different occasions for signing.

2. Dissolution decrees as muniments of title. A dissolution decree may serve as a muniment of title. However, dissolution decrees vary as to whether the decree itself serves as a muniment of title or whether it requires a quit claim deed. This raises the question for title examiners of whether to require the prescribed quit claim deed

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<sup>14</sup> *See* Marshall § 4.7.

<sup>15</sup> *See* the comment to Title Standard 5.3.

<sup>16</sup> *See* Iowa Code § 561.13.

or rely on the dissolution decree as a muniment of title where the quit claim deed has not been filed. A safer approach is to require the quit claim deed if there is any ambiguity because the decree contemplates an additional step. Note that the description of the marital property used in the dissolution decree should be the legal description rather than the street address of the property. If the dissolution decree inadvertently uses the street address, an order *nunc pro tunc* will resolve this. See Exhibit 15.

3. Sample language for a dissolution decree as a muniment of title.

The following is standard language for a dissolution decree where the decree serves as a muniment of title:

That pursuant to Section 598.21(11), Code of Iowa, the Court hereby orders a transfer of title in favor of <>, the Petitioner<>Respondent<>, to the following described real property located in <> County, Iowa:

<legal description>

If the decree is not conveying the real estate to one of the parties, but is instead converting the joint tenancy to tenancy in common, use the following language:

That pursuant to Section 598.21(11) Code of Iowa, the Court hereby orders a transfer of title in favor of <>, the Petitioner, and <>, the Respondent, as tenants in common, to the following described real property located in <> County, Iowa:

<legal description>

The Clerk of Court shall issue a title certificate under Chapter 558 relative to said real estate and deliver the same for recording to the County Recorder of <> County. The County Recorder shall deliver the certificate to the County Auditor as provided in Section 558.58(1), Code of Iowa. See Iowa Code § 598.21(11), Code of Iowa.

**Iowa Code Section 557.15** was recently amended to read as follows:

1. A conveyance of real property to two or more grantees each in their own right creates a tenancy in common, unless a contrary intent is expressed in the conveyance instrument or as provided in subsection 2.
2. A conveyance of real property to two or more grantees in a conveyance instrument in any of the following circumstances creates a presumption of joint



tenancy with rights of survivorship unless a contrary intent is expressed in the instrument and subject to subsection 3:

a. The instrument identifies two grantees as married to each other at the time the instrument is executed.

b. The instrument describes the conveyance to the grantees with the phrase “joint tenants”, “joint tenancy”, or words of similar import.

c. The instrument describes the conveyance to the grantees with the phrase “or their survivor” with reference to the grantees, or words of similar import.

3. An order of annulment, dissolution, or separate maintenance entered pursuant to section 598.21 is a muniment of title to the real property described, and severs a joint tenancy with rights of survivorship and creates a tenancy in common in equal shares, unless otherwise provided in the order.

4. Dissolution decrees which require a conveyance.

a. No transfer tax due. When the Court requires that a quit claim deed be used to convey the real estate, remember that no transfer tax, Declaration of Value, or Groundwater Hazard statement is required where the following recital occurs in the body of the deed: This deed is given pursuant to a dissolution of marriage and is therefore exempt under §428A.2(16).

b. The effect of a quit claim deed for a judgment holder. A quit claim deed given by a judgment holder for alimony or child support can create a question of whether the deed extinguishes the lien since it conveys all the grantor’s interest in the real estate. For example, a decree requires Jane Doe to convey her interest by quit claim deed; John Doe owes her a monthly alimony obligation. Although every unpaid monthly payment creates a new judgment lien, the quit claim deed from Jane Doe should specifically recite that the conveyance is subject to the lien created by the decree. The recital in the body of such a quit claim deed should use the following language:

This deed is given subject to that certain alimony / child support <> lien created in <> County Case No. <> by an Order dated <> and any amendments thereto.

If the quit claim deed is silent on the judgment lien, I still require a release from the judgment holder.

5. Judgments.

a. Judgments in general.

1) Judgments as title objections. A judgment is a lien against real estate for ten years.<sup>17</sup> This is one of the most common objections raised. The following paragraph can be used when identifying a judgment:

Entry No. <> reports a judgment in favor of <> against <> entered on <> in <> Case No. <>, in the initial amount of \$<> plus interest and costs. Unless the defendant named is not the same as the titleholder shown above<> Upon recording of the deed to the proposed grantee (unless the defendant named is not the same as the grantee) this will constitute a lien against the real estate which must be paid.<> You are advised to check with the Clerk of Court prior to closing to determine the correct amount of the judgment and the amount of any court costs which may be payable.

Be sure to sufficiently describe the judgment so that others can respond to the objection. If the judgment is actually for someone other than a titleholder or an intended titleholder, an affidavit of identity will satisfy the objection. *See* Exhibit 16. It is preferred to have a third party sign the affidavit to avoid having a self-serving affidavit, but this varies with local practices.

b. Judgments and homestead. Judgments do not attach against homestead property. Iowa Code § 561.4 provides a means of platting the homestead in order to establish of record that certain real estate should be considered homestead property. In addition, subsection b of Iowa Code § 624.23(2) was rewritten to read as follows:

b. A claim of lien against real estate claimed as a homestead is barred unless execution is levied within thirty days of the time the defendant, the defendant's agent, or a person with an interest in the real estate has served written demand on the owner of the judgment. The demand shall state that the lien and all benefits

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<sup>17</sup> Iowa Code § 624.23(1).

derived from the lien as to the real estate alleged to be or to have been a homestead shall be forfeited unless the owner of the judgment levies execution against that real estate within thirty days from the date of service of the demand. The demand shall contain an affidavit setting forth facts indicating why the judgment is not believed to be a lien against the real estate. A warranty of title by a former occupying homeowner in a conveyance for value constitutes a claim of exemption against all judgments against the current homeowner or the current homeowner's spouse not specifically exempted in the conveyance. Written demand shall be served in any manner authorized for service of original notice under the Iowa rules of civil procedure or in a manner provided in [section 654.4A, subsections 1 through 3](#). A copy of the written demand and proof of service of the written demand shall be filed in the court file of the case in which the judgment giving rise to the alleged lien was entered.

c. A party serving a written demand under this subsection may obtain an immediate court order releasing the claimed lien by posting with the clerk of court a cash bond in an amount of at least one hundred twenty-five percent of the outstanding balance owed on the judgment. The court may order that in lieu of posting the bond with the clerk of court, the bond may be deposited in either the trust account of an attorney licensed to practice law in this state or in a federally insured depository institution, along with the restriction that the bond not be disbursed except as the court may direct. A copy of the court order shall be served along with a written demand under this subsection. Thereafter, any execution on the judgment shall be against the bond, subject to all claims and defenses which the moving party had against the execution against the real estate, including but not limited to a lack of equity in the property to support the lien in its proper priority. The bond shall be released upon demand of its principal or surety if no execution is ordered on the judgment within thirty days of completion of service of the written demand under this subsection.

*See Baratta v. Polk County Health Services, Inc.*, 588 N.W.2d 107, 114 (Iowa 1999) (holding “We find that the purpose of the enactment of subsection two of Iowa Code §624.23 was not to change prior law on the effect of judgment liens upon homestead rights, but to provide a simplified procedure for homestead owners to clear the title of their homesteads from any recorded judgments against them which may cloud title to the property.”) *See* Exhibit 17 for a Notice of Homestead Designation and Demand to Levy.

c. Judgments and purchase money mortgages. Iowa Code §654.12B provides that “[t]he lien created by a purchase money mortgage shall have priority over and is senior to preexisting judgments against the purchaser and any other

right, title, interest, or lien arising either directly by, through, or under the purchaser.” The mortgage needs to recite that it is given as a purchase money mortgage. One of the risks associated with relying on this provision is that it is a protection where “the funds are in fact so used” for the purchase of real estate.<sup>18</sup> Arguably, if the loan exceeds the amount needed to purchase the homestead real estate (*e.g.*, a duplex where half of the building is going to be for income purposes), a judgment holder may assert its judgment has priority over the mortgage. The closing agent should verify the use of the funds where the purchase money mortgage protection is sought. The following language should be used in the title certificate:

It is my opinion that the above-described lien is subordinate to the mortgage you intend to issue a Title Guaranty Certificate upon. This is because the mortgage is marked “purchase money mortgage” and because all of the funds advanced upon this mortgage were actually used to purchase the property or to pay for the costs in connection with the purchase. Purchase money mortgages are superior to liens against the purchaser pursuant to Iowa Code Section 542.12(B).

d. Judgments and the *supersedeas* bond. If the abstract shows a judgment against the title holder, but an appeal has been filed, it is important to note that filing a *supersedeas* bond *does not* allow the debtor to convey the real estate free of the judgment.<sup>19</sup>

6. Child support and alimony judgments.

a. The duration of the lien. As a reminder, a judgment remains a lien for 10 years against property owned by the judgment debtor. A pitfall to avoid is to assume that there could not be a lien for child support where the child is over age 18. Read the decree carefully. The following paragraph can be used when identifying a child support or alimony obligation:

◇. Entry No. ◇ reports Dissolution of Marriage Case No. ◇, in which a judgment was entered on ◇ in favor of ◇ (the Petitioner◇ Respondent◇) against ◇ (the Petitioner◇ Respondent◇) for child support◇ alimony◇ and other matters. I require the judgment holder, ◇, file an Affidavit which acknowledges receipt of all child support and other judgment payments due under the decree of Dissolution up to and including the date upon which your deed

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<sup>18</sup> See Iowa Code § 654.12B(2).

<sup>19</sup> See Title Standard 6.6.

and/or mortgage is recorded. You are advised to check with the Clerk of Court prior to closing to determine the amount of any court costs which may be payable.

b. Calculating the amount owed. Temporary payment obligations are not liens where a final decree has been entered and incorporates the temporary judgment into the final decree. Future unpaid installments of alimony or child support obligations are not liens against the judgment debtor's real estate.<sup>20</sup> Thus, *where the entry showing the dissolution allows*, the examining attorney should calculate the amount owed (not prorated to the closing date) and compare it to the amount paid. If the judgment debtor is current, no lien exists. I recommend that the following paragraph be used in a title opinion in this situation so as to alert the parties to the obligation in the event the closing does not take place in the month anticipated:

◇. Entry No. ◇ reports Dissolution of Marriage Case No. ◇, in which a judgment was entered on ◇ in favor of ◇ (the Petitioner◇Respondent◇) against ◇ (the Petitioner◇Respondent◇) for child support◇ alimony◇ and other matters. I have calculated that the total amount owed through <month, year> is \$◇ (◇ months x \$◇ per month). The Entry reports that \$◇ has been paid. Thus, there is no lien due if the closing takes place by the end of said month and year. You are advised to check with the Clerk of Court prior to closing to determine the amount of any court costs which may be payable.

In the event the closing is delayed, you are reminded that unpaid alimony or child support obligations become a lien against the real estate. This will necessitate verification of the additional payments or requiring the judgment holder, ◇, file an Affidavit which acknowledges receipt of all child support and other judgment payments due under the decree of Dissolution up to and including the date upon which your deed and/or mortgage is recorded.

c. Obtaining a release. If the judgment debtor is not current or the payment record is not accessible, the judgment debtor will need to sign a release. See Exhibit 18.

If the status of the obligation cannot be determined and the judgment holder refuses to sign a release, the parties may need the Court to resolve the dispute.

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<sup>20</sup> See *Slack v. Mullenix*, 66 N.W.2d 99 (Iowa 1954).

Also, consider whether the purchase money mortgage protection applies. Given the frequency of this problem, remind judgment debtors to pay through the clerk of court and encourage family law attorneys to draft dissolution decrees that allow for verification of compliance by payment records.

d. Iowa Child Support Recovery Unit. If the judgment has been assigned to the Unit, a release will need to be obtained from them. This can sometimes prove difficult, especially if time is an issue. You will want to make sure that the party with the judgment arranges for a showing of record that the judgment has been satisfied.

e. Child support for post-secondary education. When child support for post-secondary education is required, a release from the adult child is needed.

The following language may be used in the title opinion:

◇. Entry No. ◇ reports Dissolution of Marriage Case No. ◇, in which a judgment was entered on ◇ in favor of ◇ (a child whose date of birth is ◇) against ◇ (the Petitioner◇Respondent◇) for support for post-secondary education pursuant to Iowa Code § 598.1. Iowa Code § 598.1(8) indicates that this obligation may be required for educational expenses of a child who is between the ages of eighteen and twenty-two years if the child is regularly attending a course of vocational-technical training either as a part of a regular school program or under special arrangements adapted to the individual person's needs; or is, in good faith, a full-time student in a college, university, or community college; or has been accepted for admission to a college, university, or community college and the next regular term has not yet begun.

I require the judgment holder, ◇, to file an Affidavit which acknowledges receipt of all support for post secondary education due under the decree of Dissolution up to and including the date upon which your deed and/or mortgage is recorded.

f. Conveyance by warranty deed by both parties. If a dissolution decree leaves John Doe and Jane Doe as tenants in common and also creates a judgment in favor of one of them, a warranty deed from both conveys all of their interest in the real estate – including the lien. No specific release is required. However, a judgment for court costs or attorney fees would remain as a lien.

7. Property distribution. Occasionally a dissolution decree will require one of the parties to make installment payments towards a property distribution. For example, John Doe owes \$10,000 to Mary Doe, with monthly payments of \$500 beginning the month after the entry of the decree. This looks very similar to a child support or alimony obligation and it would seem reasonable to only have the judgment debtor current on monthly payments. *However, the entire amount of the property settlement, because of the certainty of the amount owed, is a lien against the real estate and must be satisfied.*<sup>21</sup> In the alternative, the judgment holder can release the property from the lien without satisfying the judgment. *See* Exhibit 19 for such a release.

8. Attorney fees and court costs. Note whether the judgment debtor is also responsible for the attorney fees of the judgment holder. In addition, court costs also constitute a lien which must be satisfied.

#### **F. Decedent's estates**

1. Initial step. Chapter 9 of the Title Standards determines what showing is needed for a given estate situation. The first task is to determine the factual background of the conveyance (*e.g.*, the date of death and whether the real estate is being conveyed by an executor, surviving joint tenant, or heir) and then follow the standards.

2. Showing nonliability for taxes. Depending on the situation, there may be a need for a showing of nonliability for Iowa inheritance taxes, Iowa estate taxes, or federal estate taxes. *See* Exhibit 20 for a form establishing that the estate falls under the exclusion amount in the absence of a probate inventory. The exclusion amounts needed for drafting the affidavit follow:

Year of death	Applicable exclusion amount
2006 to 2008	\$2,000,000
2009	\$3,500,000
2010 and 2011	\$5,000,000

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<sup>21</sup> *See* Marshall § 10.3.

2012	\$5,120,000
2013	\$5,250,000
2014	\$5,340,000
2015	\$5,430,000
2016	\$4,450,000

3. Authority of executor. In order for an executor to convey real estate on behalf of the estate, the abstractor must show that the executor had the authority to convey the real estate – either by the will authorizing the executor to convey real estate without obtaining court approval or by the executor receiving authority from the Court to convey the real estate. Note that conveyances that have been recorded longer than ten years ago, even if the fiduciary lacks court approval, are considered valid.<sup>22</sup> See Title Standard 9.12 for the requirements of what must be shown as to tax liability.

Practice pointer. You will want to determine local standards as to an adequate showing of death in the abstract, whether by death certificate or an affidavit.

#### **G. Estate planning concerns**

1. Ownership. As an examining attorney, you will occasionally discover information that has implications for a titleholder's estate planning. Be cautious in giving estate planning counsel in your title opinion. There is simply not enough information in the abstract to properly advise someone about their estate plan. For example, you render a preliminary title opinion where John Doe holds title. In the next entry, a mortgage is given by both John Doe and Mary Doe, Husband and Wife, yet they do not own the real estate as joint tenants. Resist the temptation to offer advice that a joint tenancy should be created. Certainly it is a possibility that this is what they should do, but there may be very legitimate reasons why they do not own the real estate jointly. At the most, you should counsel people to seek legal advice as to how they hold title. Conversely, when you are doing estate planning with a couple, you should verify how

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<sup>22</sup> Iowa Code § 589.11.



they hold title beyond the clients' own opinion. If you fail to verify how title is held, you may find yourself with an angry client when he or she learns that they owned their real estate as tenants in common and now needs to probate the estate of the deceased spouse.

2. End of life issues. Most adults, but particularly clients with failing health, should have durable powers of attorney in place that nominate individuals or institutions to act on their behalf in the event they are disabled by accident or illness. There may be situations where conveying real estate with the goal of avoiding probate is in order, but there are risks inherent with assuming that people will die in a particular order or judgments attaching.

3. Tax planning. Your clients should understand the tax implications of how they own their real estate. This is particularly true with respect to investment property and agricultural property. Clients with investment property should consider deferring gains with the use of tax-deferred exchanges.

#### **H. Abstract review**

Once you have determined that you have an acceptable abstract, the examination can begin. The abstract should be continued within 60 days of issuing the title commitment. What follows are additional areas for an attorney to keep in mind when examining an abstract.

1. Chain of title. Verify that you have a continuous chain of title for at least 40 years. Be sensitive to changes of the names of individuals and entities and account for any partial interests in the real estate.

a. Variation of entity name. Conveyances and mortgage releases by entities routinely vary. Title Standard 3.4 allows for minor variation (*e.g.*, use or nonuse of “company” or “incorporated”; the interchange of “&” and “and”) and the inclusion or omission of the location of the entity. If the variation is too large to ignore, then there should be recitals which show the relationships (*e.g.*, First World Universal Bank, Inc., f/k/a Hometown Savings Bank, Inc.). Before trying to obtain a corrective

document, consult with the local abstractors to determine whether an affidavit has already been filed in the county which explains the name variation.

b. Variation of individual name. Chapter 8 of the Title Standards provides direction for different situations involving variations in individual names. *Minor variations that do not rise to the level of an objection are* (1) surnames that are spelled differently, but sound the same (8.1); (2) inclusion or omission of a middle initial (8.2); abbreviation or spelling out of a name (8.3); (3) variations between a name in the body of a deed and how it is signed where the acknowledgment agrees with either (8.6); and (4) inclusion or omission of descriptive phrases and words (*e.g.*, Jane Doe, wife of John Doe, or Dr. or Mr.) (8.7). *Variations that are objectionable are* (1) changes due to marriage (and by implication divorce) (8.4); and (2) variations in designations such as “Jr.” and “Sr.” where questions of identity are raised (8.7). Resolution of these objections may be by reliance on recital in a conveyance (*e.g.*, Jane Doe, f/k/a Jane Smith) (8.5), affidavits of identity which state the maker’s knowledge in the transaction (8.8), or affidavits of possession under Iowa Code § 614.17A where 10 years have passed since the discrepancy (8.10).

2. Mortgages. Some examining attorneys recite the amount secured by the mortgage; this is unnecessary, but helpful to confirm the extent of the known mortgages. **All mortgages must be released, subordinated, or assumed.** A common problem is for releases to be from the wrong entity. This is usually remedied by the use of an assignment or a new release. A defective release filed over 10 years ago is considered valid pursuant to Iowa Code § 589.8. Remember that a mortgage is unenforceable if 10 years have elapsed since the maturity date or if 20 years have elapsed where the maturity date is not shown.<sup>23</sup> A second mortgage will sometimes be subordinated with a refinance transaction. *See* Exhibit 21 for a mortgage subordination agreement. **Open-ended mortgages will often require written instructions to close the line of credit in order to obtain a mortgage release even if the outstanding balance has been satisfied.** Thus, be sure to note when a mortgage is securing an open-

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<sup>23</sup> *See* Title Standards 10.4 and 10.5.

end loan. If it is not so indicated on the payoff statement, the closing agent may not realize that a line of credit is involved and not obtain the necessary written instruction from the borrower to close the line of credit. If the borrower continues to use the line of credit, this will obviously present a significant problem. *See* the preliminary title opinion form at Exhibit 6 for sample language.

3. Judgments. *See* Section E.5 above.

4. Taxes. You will need to report any delinquent taxes, tax certificates, or special assessments.

5. Platting procedures. When reviewing platting procedures, be sure to verify that any mortgagees have consented to the platting. In addition, do not assume that the title opinion shown in the platting necessarily shows all the mortgages. It is prudent to note any mortgage given by the titleholder prior to the platting.

6. Restrictive covenants. Care should be given to review any restrictive covenants, especially if you have particular knowledge about your client's intended usage of the property. **Note whether the covenants extend beyond the 21 years permitted by the rule against perpetuities either by automatic renewal or by a statement that they run with the land.**<sup>24</sup> Also, some covenants require a waiver by the homeowners' association of a first refusal to purchase the real estate. An affidavit for such a waiver is provided as Exhibit 22. Restrictive covenants occasionally contain easements you need to recite.

7. Developers' agreement. A government body may have to file a release or satisfaction where a developer's agreement to make improvements creates an interest in the real estate. (Some agreements are secured by a bond.) Read the agreement carefully to determine the extent of the government's interest in the real estate.

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<sup>24</sup> *See Chipman's Subdivision Homeowners Association, Inc. v. Carney*, 814 N.W.2d (Iowa Ct. App. 2012.).

8. Mechanic's liens. A mechanic's lien is barred after 2 years and 90 days from the last day work or material was provided.<sup>25</sup> These liens may be lifted by the filing of a bond.

9. Mortgage foreclosure. The examining attorney should become familiar with Iowa Code Chapter 654. There are numerous issues that can arise with a mortgage foreclosure. Here are a few key issues to consider:

a. Is the right party bringing the foreclosure? There may be a need for an assignment to correct this.

b. Are the correct defendants named and served? For example, make sure the mortgagor's spouse is named as a defendant.<sup>26</sup> Are there junior lienholders such as judgment holders whose judgments predate the *lis pendens* date?

c. Is the property being sold after the foreclosure decree but before a sheriff's sale? If so, the junior liens remain.

Sometimes an abstract will not report a release of the mortgage that was foreclosed or junior liens or interests that would have been extinguished by the foreclosure. Title Standard 7.3 clarifies that this *does not* cloud the title.

10. Contract conveyance and forfeiture. This is yet another area that it will be impossible to cover with sufficient thoroughness in this material. A few of common issues need to be addressed.

a. A couple of implications of equitable conversion. When the equitable title is conveyed, the contract vendor (*i.e.*, the seller) is left with bare legal title (*i.e.*, personalty) by virtue of equitable conversion. As a result, judgments against the vendor subsequent to the conveyance do not attach as liens. In addition, if a contract vendor marries after the conveyance of the equitable interest, the spouse does not have a dower interest in the personalty which must be released.<sup>27</sup>

b. Assignment of contract by vendor. You are encouraged to review Marshall § 20.1(G) for an explanation of the nature of an installment contract. A

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<sup>25</sup> Iowa Code § 572.27.

<sup>26</sup> See Title Standard 6.1.

<sup>27</sup> See Marshall § 20.1(B).

conveyance by the contract vendor is made by *both* (1) assignment of the vendor's interest in the contract and (2) conveyance of the vendor's interest in the title to the real estate.

c. Conveyance by the contract vendee. Marshall addresses conveyance by the vendee at § 20.1(H). The vendee's interest in the real estate may be conveyed by an assignment with proper language of conveyance as long as the instrument is signed by the spouse (if any) and properly acknowledged.

d. Death of the contract vendor. Marshall explains the importance of executing a deed in fulfillment of the contract:

The proper mechanics of a contract of sale of real estate is for the vendor, at the time of the execution of the contract, to execute and deliver in escrow a deed, to be delivered to the vendee or his assignee when the vendee has fully performed the terms of the contract. This prevents difficulty if the vendor should die before the time for transferring the legal title to the vendee. Otherwise, the conveyance must be made by the personal representative of the vendor, unless his estate has been closed, in which case his heirs or beneficiaries would make the conveyance.<sup>28</sup>

e. Contract forfeiture. Iowa Code chapter 656 is the statutory authority for contract forfeiture. A 30-day notice is required, but there must be care given that all parties in interest receive notice. The effect of a contract forfeiture is that all parties claiming an interest in the real estate (*e.g.*, lien holders) under the original or successor vendee lose their interest in the real estate. However, if the vendee conveys a deed to the vendor in lieu of forfeiture, this *does not* operate to cut off all those interests in the real estate that would have occurred by forfeiture. **Thus, if there are judgments against the vendee, the vendor should forfeit the contract rather than accept a deed offered in lieu of forfeiture.**

11. Bankruptcy. Many examining attorneys concur with the statement that “[n]othing is quite as unpleasant to an examining attorney as turning a page in an

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<sup>28</sup> Marshall § 20.1(B).

abstract and finding bankruptcy proceedings.”<sup>29</sup> While it is, once again, beyond the scope of this outline to provide a thorough discussion of how bankruptcy impacts abstract examination, an important point that must be stressed is that, according to Marshall § 21.1, “[t]he effect of bankruptcy upon a judgment lien is that in the event the bankrupt is discharged he is relieved only of personal liability to all provable debts but the lien remains.”<sup>30</sup> Thus, the lien must still be released.

12. Easements. The examining attorney should report easements involving the subject property. Typical easements deal with utilities, water pipelines, sewer lines, surface water flowage, mineral rights, and access. The examiner should be careful to note easements which involve other properties (*e.g.*, well agreements, private road agreements, shared driveway agreements, and manure spreading agreements). Be sure to note whether these easement run with the land or are given to a specific individual. Corrective documents may be required if an easement was given to an individual and did not run with the land. In addition, **these types of easements often need maintenance agreements to determine, for example, when a shared driveway should be repaired and at whose expense**. Utility easements are often given their own entry; however, sometimes you will find them embedded in the restrictive covenants or only shown on the survey in the platting procedures.

13. Affidavit of surviving spouse. Occasionally issues are raised as title objections that are not actually title objections. Because the language in the standard paragraphs require the sellers to clear all title defects, there can be disputes about who is responsible to address issues that are not clearly clouding the title. For example, John and Mary Doe own their home as joint tenants; John dies, but the clerk has not issued the Change of Title. Mary Doe sells the house to the Smiths. The auditor may send a letter to the Smiths informing them that John Doe is still an “owner” of the real estate according to county records. You can anticipate the response from the buyers. However, the fact that John Doe remains on the tax rolls is not itself a title defect, but it may appear

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<sup>29</sup> Theodore L. Kubicek & David W. Kubicek, *Selected Topics in Examination of Abstracts of Title*, 26 DRAKE L. REV. 1, 7 (1976).

<sup>30</sup> *See also* Title Standard 13.4.

like one to the Smiths. Iowa Code § 558.66 provides the form for a surviving spouse. See Exhibit 23.

## **I. Resources**

An attorney who examines abstracts on a regular basis should acquire the following resources:

1. COMMITTEE ON TITLE STANDARDS OF THE IOWA STATE BAR ASSOCIATION. IOWA LAND TITLE STANDARDS EIGHTH ADDITION (2015). This can be downloaded from the Iowa State Bar Association website ([www.iowabar.org](http://www.iowabar.org)).

2. THE IOWA STATE BAR ASSOCIATION. THE IOWA STATE BAR ASSOCIATION REAL ESTATE MANUAL 2003 (2003).

3. GEORGE F. MADSEN. MARSHALL'S IOWA TITLE OPINIONS AND STANDARDS (2d ed. 1978).

4. RUFFORD G. PATTON AND CARROLL G. PATTON. LAND TITLES: A TREATISE ON TITLE RECORDS, RECORDS AS MUNIMENTS OF TITLE, PRIORITIES, ENCUMBRANCE SHOWN BY COUNTY, STATE AND FEDERAL RECORDS OR EXISTING IN PAIS, PROOF OF TITLE, EXAMINATION OF TITLE, AND THE NATURE OF TITLE REQUIRED TO FULFILL CONTRACTS FOR SALE OR SECURITY (1938).

5. Theodore L. Kubicek & David W. Kubicek, *Selected Topics in Examination of Abstracts of Title*, 26 DRAKE L. REV. 1 (1976).

In addition, read the List Serve for the ISBA Real Estate & Title Law Section.

## V. Curing title problems

### A. The quiet title suit.

The development of remedial legislation and measures crafted by Title Guaranty to clear off mortgages securing loans that have been satisfied have diminished the need for quiet title actions. In addition, there are pragmatic limitations that do not favor quiet title actions. The seller and buyer need to get the real estate transaction closed as quickly and inexpensively as possible, and the lender needs to get the loan to the secondary market as quickly as possible.

1. Authority. Chapter 649 of the Iowa Code is the statute governing quiet title actions.

2. When to consider a quiet title action.

a. Iowa Code § 649.1 Who may bring action.

An action to determine and quiet the title of real property may be brought by anyone, whether in or out of possession, having or claiming an interest therein, against any person claiming title thereto, though not in possession.

Clearing a cloud on title is one of the reasons to file a quiet title action.<sup>31</sup>

3. The petition and notice.

a. Iowa Code § 649.2 Petition.

The petition therefor must be under oath, setting forth the nature and extent of the petitioner's estate, and describing the premises as accurately as may be, and that the petitioner is credibly informed and believes the defendant makes or may make some claims adverse to the petitioner, and praying for the establishment of the plaintiff's estate, and that the defendant be barred and forever estopped from having or claiming any right or title to the premises adverse to the plaintiff.

b. Serving notice. Pursuant to Iowa Code § 649.3, the notice shall accurately describe the property and, in general term, the nature and extent of the

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<sup>31</sup> *Peck v. Sexton*, 41 Iowa 566 (Iowa 1875).



plaintiff's claim. The plaintiff need not be in possession of the real estate. The method of service is the same as other cases. The basis of the quiet title action is not the weakness of the defendant's claim; rather it is based on the strength of the plaintiff's case.

c. Naming the proper defendants. The decree from a quiet title action is only binding against those parties that are properly served. Thus, the plaintiff must be careful to include all persons having possible claims against the property.

## **B. Remedial legislation.**

1. The Iowa Marketable Record Title Act (Iowa Code §§ 614.29-.38) serves to cure most title defects that occur before 40 years. This clears ancient clouds on the title. There are eight exceptions the Act, the most common being easements and interests of the United States.<sup>32</sup>

2. Statutes of limitation. These statutes bar claimants from asserting rights if they have neglected their claim for too long. *See* Iowa Code §§ 614.29-.38 and Chapter 10 of the Title Standards. An example of a statute of limitation is the determination that a mortgage more than twenty years old and lacking a maturity date is barred by Iowa Code § 614.21.

3. Curative statutes. These statutes correct matters that cloud title.

4. Affidavit of possession. Iowa Code §§ 614.17 and 614.17A create the basis for the Affidavit of Possession. The former bars any action based on claims to real estate which arose or existed prior to January 1, 1980; the latter bars actions based on claims which arose or existed more than ten years earlier.

a. Iowa Code § 614.17A states:

1. After July 1, 1992, an action shall not be maintained in a court, either at law or in equity, in order to recover or establish an interest in or claim to real estate if all the following conditions are satisfied:

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<sup>32</sup> Iowa Code § 614.36.

- a. The action is based upon a claim arising more than ten years earlier or existing for more than ten years.
  - b. The action is against the holder of the record title to the real estate in possession.
  - c. The holder of the record title to the real estate in possession and the holder's immediate or remote grantors are shown by the record to have held chain of title to the real estate for more than ten years.
2. The claimant within ten years of the date on which the claim arose or first existed must file with the county recorder in the county where the real estate is located a written statement which is duly acknowledged and definitely describes the real estate involved, the nature and extent of the right of interest claimed, and the facts upon which the claim is based. The claimant must file the statement in person or by the claimant's attorney or agent. If the claimant is a minor or under a legal disability, the statement must be filed by the claimant's guardian, trustee, or by either parent.

The filing of a claim shall extend for a further period of ten years the time within which such action may be brought by any person entitled to bring the claim. The person may file extensions for successive claims.

3. Nothing in this section shall be construed to revive any cause of action barred by section 614.17.

b. Possession. Unlike the quiet title action, the person asserting rights under this code section must be in possession of the real estate. *See* Exhibit 24 for a sample affidavit of possession.

c. Exceptions. Charles Augustine, in his chapter *Statutes of Limitation and Marketable Title Acts* in THE IOWA STATE BAR ASSOCIATION REAL ESTATE MANUAL 2003, lists six exceptions to the Affidavit of Possession:

- 1) Governmental claims;
- 2) Mortgages and contracts;
- 3) Affirmative easements;
- 4) Spousal claims;
- 5) Reversionary or future interests;
- 6) Reservations of mineral rights.<sup>33</sup>

**C. Monetary settlement and escrow agreements.** If a cloud on title cannot be resolved prior to closing, the parties may elect to establish an escrow to fund remedial action after the closing. Title Guaranty can be of assistance with this.

**D. Tips for obtaining missing or corrective documents.**

One of the challenges in clearing title problems is obtaining missing or corrective documents, often from out-of-state lenders. This problem has been significantly increased by the frequency mortgages are assigned on the secondary market. These documents include mortgage releases and corrective assignments. While this task is often handled by the closing agent, an attorney is often consulted about how to deal with such issues. The following are steps that can assist with tracking down needed documents.

1. The loan number. Lenders generally cannot access a loan file by the recording information of a mortgage; in some situations, the borrower's name is not even sufficient. Rather, the primary information needed is the loan number. In order to obtain this, begin by getting a copy of the mortgage to see if there is a loan number is listed on the first page. Lenders sometimes recite the loan number on their recorded documents.

2. Develop a system. Obtaining documents from large institutions is rarely a quick process. It is common to struggle with even finding a phone number for a

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<sup>33</sup> *Id.* at § 5, page 4 (citations omitted).

department that can issue corrective documents. The preparer information on a recorded document can be a helpful resource. The internet may also lead to a contact with the lender.

Many lenders will require submission of a formal request to their research department. Whenever possible, note the name of your contact with the lender, a direct phone number, and when you can reasonably expect a response. This information should go into your “tickler” system. This kind of work lends itself to delegation to staff because it is very time consuming.

If the lender asks what you would like done with the desired document, encourage the lender to record the original at their expense and send you a copy of the instrument for your files so that you can alert the abstractor that the final abstracting work can now be completed. Most abstractors search for final documents on a regular schedule.

3. The Title Guaranty mortgage release program. This is a program for obtaining a release of a mortgage where the loan has been paid where a mortgage release has not been filed. Generally a lender’s payoff and proof of payment are required. *See* [www.iowafinanceauthority.gov/TitleGuaranty](http://www.iowafinanceauthority.gov/TitleGuaranty).

## **VI. Closing residential real estate transactions.**

### **A. Objectives for the residential real estate closing.**

1. As to lenders. Pursuant to an agreed upon Closing Disclosure (CD), gather and disburse funds, record the deed (for a purchase closing) and mortgage, and make sure that the mortgage is in first position.

2. As to the borrowers. Present the loan documents in a manner that will assist the borrowers in understanding the nature of the transaction and the terms of the loan. You want them to leave the closing with a general understanding of what they just signed.

3. As to the quality of Iowa title. Facilitate the clearing of title objections to leave the title of property in better condition than when you found it, if possible.

4. As to the public. Conduct the transaction in a manner that complies with – and promotes – ethical transactions. This means following the terms of the closing instructions<sup>34</sup> as well as federal and Iowa law. For attorneys, this also means following the Iowa Rules of Professional Conduct.

5. The Iowa Bar Association website has a video which goes into more detail on closing residential real estate transactions and a video on closing residential loans under the Consumer Financial Protection Bureau Rules.

**B. Pre-execution matters.**

**1. Issue the title commitment.**

**2. Gather necessary information.**

a. Names, phone numbers, and e-mails of the parties (lender, realtors, escrow companies, and attorneys).

b. Closing date.

c. CD information:

1) The party responsible for preparing and delivering the CD;

2) The delivery date of CD;

3) The anticipated date for receiving the closing instructions and closing figures;

4) The names and contact information of the parties who should receive the CD;

5) Form of documentation needed to confirm receipt of the CD.

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<sup>34</sup> The closing instructions create a contract between the settlement agent and the lender. See e.g., *FDIC v. St. Louis Title*, 2014 WL 200368 (E.D.M.O. Jan. 17, 2014).

d. Buyers' and sellers' closing figures and invoices. Every number on the Closing Disclosure has to have documentation in the file. (Assume every file will be audited.)

e. The closing file should have the following documents:

- 1) Lender's instructions (Very important to read.)
- 2) Seller's Closing Statement
- 3) Buyer's Closing Statement
- 4) Important emails
- 5) Deed
- 6) Purchase agreement and any amendments
- 7) Loan application and request for title commitment
- 8) Documentation on the status of earnest money
- 9) Title opinion from a Title Guaranty Member

### **3. Review files in advance of the closing.**

- a. Encourages review of title objections.
- b. Determine the missing information and make requests.
- c. Verify whether there are open-end mortgages.
- d. Are there closings with special circumstances (*e.g.*, short sale situations, relocation companies, or government entities that need the Closing Disclosure early, a simultaneous closing, etc.)?

### **4. Dealing with unrepresented (FSBO) sellers.**

- a. Provide FSBO sellers with a list of expectations you have of them. *See* Exhibit 25 for a sample punch list. It's easier for the sellers to obtain a payoff for their loan. Written authorization from the borrowers is needed if you are going to obtain the payoff on their behalf. We calculate the tax proration credit.
- b. Remind FSBO sellers of the timeframe for reviewing the Closing Disclosure.

c. Arrange with FSBO sellers how they will be signing the final Closing Disclosure and receiving their proceeds.

1) I do not require an original signature on the Closing Disclosure and often receive e-mailed or faxed signatures.

2) If an agent is going to be signing the Closing Disclosure for the seller, require a copy of the power of attorney to permit that.

## **5. Prepare the Closing Disclosure.**

a. The majority of this work will involve incorporating the figures from the lender and realtors into software designed to create a Closing Disclosure that works with your accounting software, balances the inflows and outflows for a closing, and prints the checks. This is the primary tool of a closing practice.

b. Payoffs.

1) Payoffs must have the lender's letterhead on it and provide the payoff date and a per diem. A "screen dump" showing the current payoff is not sufficient. It must have information on where to send the payoff by wire transfer or overnight courier. A hand-written number payoff is not acceptable.

2) *If you cannot read the payoff, it doesn't count.*  
Require a clean and legible copy.

3) Be careful with credit card payoffs to make sure that you have all of the required information and the account number. Include a copy of the statement with the check.

4) Add three business days of interest to the payoff for a purchase closing and six business days for a refinance closing.

a) The purpose of this is that lenders vary as to when their cutoff times are for receiving a payoff. If the payment is short, a lender will often reject the entire payment and interest continues to accrue. The excess payment is returned to the borrowers.

c. Use the Closing Disclosure to document other important measures. Examples:

1) A mortgage secures a loan that has no outstanding balance.

2) Taxes that were paid outside of closing (POC).

3) On a Closing Disclosure for an installment contract, show what the seller will need to pay for transfer tax.

d. **Any closing cost credits must be shown on the Closing Disclosure.** The Closing Disclosure is designed to create transparencies in residential closings. The moment we start allowing parties to exchange money outside of the closing, the Closing Disclosure becomes useless.

1) Statement for the sellers and buyers: “I have carefully reviewed this Closing Disclosure and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction.”

2) Statement for settlement agent: “The Closing Disclosure which I have prepared is a true and accurate account of funds received and funds disbursed or to be disbursed for this transaction.”

3) If a lender asks you to do something you are uncomfortable with, ask them to amend their closing instructions in writing. This usually resolves the matter.

e. Double check the spelling of the parties’ names and the addresses.

f. Verify that you have a SSN for a seller (an EIN for an entity).

g. Recording fees. If you have the number of pages for the deed and mortgage when you send the draft Closing Disclosure, include them. If not, you can estimate \$12 for a one-page deed and \$82 for a 16-page mortgage. Riders sometimes come later.

h. Title Guaranty premium. Verify the premium.

i. Ask to see a draft of the proposed deed.



This will allow you to verify how title is vesting, the number of pages, the accuracy of the legal description, and matching grantor name recital with how title is held.

j. The Closing Disclosure is provided at least three business days prior to the closing. The closing is not the time to re-negotiate the terms of the transaction.

**6. Search the Mechanic's Notice and Lien Registry (MNLN).<sup>35</sup>**

a. The MNLN should be searched at the time of the title opinion, the closing, and, if a refinance, the day the mortgage is filed. *See* Exhibit 26 for a sample worksheet.

b. If the MNLN search yields a filing, be sure to file lien waivers on the MNLN.

**7. Points to reinforce to lenders.**

a. Every titleholder and their spouse must join in giving the mortgage. *See Wells Fargo Bank, N.A. v. Hudson.*<sup>36</sup>

1) Sometimes out-of-state lenders believe that the non-borrower spouse does not need to sign the mortgage.

2) The loan officer should remind the borrowers to bring certified funds to the closing or arrange for a wire transfer.

**8. Escrow agreements.**

a. Sometimes there is work that cannot be completed prior to the closing or an issue arises during the final walk through.

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<sup>35</sup> The Iowa Court of Appeals issued a ruling in *Standard Water Control Systems, Inc. v. Jones*, 2016 WL 4543505 (Iowa Ct. App., Aug. 31 2007) which holds that contractors that do not have subcontractors are not required to file a pre-lien notice (i.e., a notice of commencement) in order to file a mechanic's lien. An application for further review has been filed.

<sup>36</sup> 742 N.W.2d 605 (Iowa Ct. App. 2007).

b. If, and only if, the amount of the remaining work can be determined with accuracy, set aside at least 150% of the projected amount in an escrow account. *See Exhibit 27 for a form.*

**9. Addressing title objections.**

a. For any title objections, make sure that the file evidences the remedial measures that were taken. This can be as simple as notes on the file copy of the title opinion or as elaborate as a memo on why a particular remedy was accepted.

b. *Document your decisions presuming: (1) you will not remember why a certain remedy was accepted and (2) you will be sued for it.*

**10. Powers of attorney (POA).**

a. If a POA will be used in a transaction, make sure that it is approved by the lender. There are lender-specific requirements for POAs. *See Exhibit 28 for a sample form.* A lender may wish you to add the loan number, the street address, or the length of time the POA is in effect.

b. Obtain direction on how the documents are to be signed. Lenders increasingly have a particular manner in which they require the documents to be signed where a POA is used. Samples:

1) *John Doe*

John Doe as Agent for Jane Doe

2) *John Doe as Agent for Jane Doe*

John Doe as Agent for Jane Doe

3) *John Doe as AIF for Jane Doe*

John Doe as Agent for Jane Doe

c. **Remember that the acknowledgement needs to reflect the representative capacity.** See Iowa Code § 9B.15. Consider making a stamp as follows to help with preparing a closing package to signed with a POA or other representative capacity:

State of Iowa, \_\_\_\_\_ County) SS.  
This instrument was acknowledged before me on  
\_\_\_\_\_, by  
\_\_\_\_\_ as Agent of  
\_\_\_\_\_.  
  
\_\_\_\_\_  
Notary Public in and for said County and State

**11. Working with the federal government, short sale transactions, and relocation companies.**

a. Greater time is required in order to obtain approval on the Closing Disclosures. The parties will need to provide their information to you sooner than normal in order to allow you sufficient time to provide a draft Closing Disclosure.

b. There is no transfer tax to pay when the federal government is conveying the real estate. See Exhibit 29 for a list of the exemptions under Iowa Code § 428A.2.

c. When working with a relocation company, you will want to clarify whether the transaction will involve one or two deeds.

Practice pointer. Deeds for property coming out of foreclosure often need extra review. Sometimes there will be a blank for the closing agent to fill in the names of the grantees.

**12. File preparation.**

a. Highlight the signature lines and places to initial on the loan documents. *Missing a signature is always bad.* You might also highlight the SSN on the W-9 to have the borrowers make sure it is correct.

- b. Double check recital of the name and marital status on the mortgage. Use a/k/a or f/k/a to show name variations.
- c. Confirm the legal description (particularly if you have a metes and bounds legal description) and street address one last time.
- d. Make copies of the package for the borrowers. It is helpful to have the temporary payment coupon on top for the borrowers.
- e. Sign the documents in blue ink so that it is obvious which are the originals.
- f. If there is a payoff of a line of credit mortgage, the mortgagors will need to sign instructions to close the line of credit that the lender provides or that you provide. *See Exhibit 30* for sample instructions to close a line of credit.
- g. *See Exhibit 31* for a sample organizational list of a closing package.

**13. Suggestions for high-volume days.**

- a. Order lunch for your staff.
- b. Make sure that files do not get mixed up when prepping and post-closing.
- c. Double check the money in and money out, and that the deposit has been made before disbursing. Make sure the lender has approved the disbursement if funding approval is required.
- d. Remind loan officers to let borrowers know you are on a tighter schedule than normal and that borrowers should arrive promptly.
- e. If a file is becoming a problem, consider moving it to the end of the day so it does not throw the other files off schedule.
- f. Bring in extra staff if possible. Delegate tasks where possible.
- g. Give lots of grace to people.

- h. Show appreciation to your staff.
- i. Look at the schedule beyond the busy day to get as much done on those files before the busy day.
- j. Consider asking loan officers whether some files have the flexibility to close on a different day.

**C. Execution of the loan documents.**

**1. Your attitude in the transaction.**

- a. Before every closing, remind yourself that this is a unique and large transaction for the borrowers. Let this shape the way you conduct the closing.
- b. If borrowers come across as defensive or argumentative, they may just be nervous and defensive about a transaction they feel uncomfortable with. Look past it.

**2. Your role as a notary public.**

- a. **The notary has only one task in the closing: to verify the identity of the person signing the documents before you.** *No exceptions.* Iowa Code § 9B.5 (Requirements for certain notarial acts) states:

1. A notarial officer who takes an acknowledgment of a record shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the notarial officer and making the acknowledgment has the identity claimed and that the signature on the record is the signature of the individual.

2. A notarial officer who takes a verification of a statement on oath or affirmation shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the notarial officer and making the verification has the identity claimed and that the signature on the statement verified is the signature of the individual.

3. A notarial officer who witnesses or attests to a signature shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the notarial officer and signing the record has the identity claimed.

4. A notarial officer who certifies or attests a copy of a record or an item that was copied shall determine that the copy is a full, true, and accurate transcription or reproduction of the record or item.

5. A notarial officer who makes or notes a protest of a negotiable instrument shall determine the matters set forth in section 554.3505, subsection 2.

b. Consider using a notary log. This will serve as a protection for you in the event someone was to create a false notary stamp for you.

c. Make sure your notary has not expired.

### **3. Pointers for signing the documents.**

a. Preliminary instructions.

1) Explain what your goals are for the meeting.

2) Encourage questions.

3) Remind people to sign as typed on the documents

and to use the correct date.

b. The Closing Disclosure.

1) Highlight the Title Guaranty owners' policy.

2) If new construction, explain how the escrow account will eventually have a shortfall and how to address it.

3) Explain how the prepaid interest works and when the first payment will be due.

4) Explain how the real estate tax proration credit works.

5) When closing in early summer, remind borrowers who have an escrow account that the lender has received a copy and that the tax statement is not a bill.

6) Explain the Annual Percentage Rate (APR) and the two approaches to making payments.

c. The promissory note.

d. The mortgage.

e. Other standard forms.

1) Insurance must be maintained without gaps.

2) Occupancy statement. Confirm occupancy.

3) Loan application. The financial status of the borrowers has not changed since the loan application – no change in employment or debts.

4) Closing attendance form. *See* Exhibit 32 for a sample. This is encouraged by Title Guaranty in the event there is a dispute over who attended the closing.

f. The form of the borrower funds – certified funds, wire transfer, or attorney trust account checks when you are familiar with the firm.

g. If the borrowers are receiving a small check at closing, encourage them to deposit the check soon to allow you to reconcile your trust account in a timely fashion. Deposit the money for the borrowers if possible.

h. Final reminders to borrowers.

1) Explain joint tenancy with the deed or title opinion.

2) Encourage buyers to sign up for the homestead tax credit and military tax credit. *See* Exhibit 33 for a sample reminder form. Ask borrowers in a refinance closing whether they have signed up for the credit.

3) Provide the abstract to the buyers.

a) Have them sign an abstract receipt. *See* Exhibit 5.

b) Remind the buyers that they will not need the abstract again until they sell the property and that the abstract could cost in excess of \$1,500 should they lose it. Abstracts should be stored in a lock box or fire safe.

i. Miscellaneous pointers.

1) If the borrowers have signed all of the documents and there are other discussions going on, page through the documents while you are waiting to look for a missed signature or date.

2) Review the transfer documents (*i.e.*, warranty deed, declaration of value, groundwater hazard statement, and composite mortgage affidavit) to make sure that everything was properly completed, signed, and notarized.

3) Encourage verification that the first payment comes out on time if being paid with an automatic payment.

#### **4. Additional pointers.**

a. Typical problems that arise.

1) Incorrect figures on the Closing Disclosure.

2) Errors on the closing documents.

3) Non-English speakers.

4) Source of funds.

a) Seller carry back.

b) Bogus gift letters.

5) The title is only in one name, but was supposed to be in two names. You cannot add parties or parcels to a deed – scrivener error corrections only.<sup>37</sup>

6) Borrowers who want to read all the documents.

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<sup>37</sup> *McNertney v. Kahler*, 710 N.W.2d 109 (Iowa 2006).



a) Remind them that these are standard documents and that you have provided them with a set of copies. If they insist on reading all of the documents, then attempt to provide them with a conference room so you do not have to watch them read.

b) Be kind. They borrowers are nervous.

7) Borrowers disclose something that is inconsistent with the lender's presumptions (*e.g.*, owner-occupied status, the source of funds, employment). Your client is the lender. **You have a duty to inform them of any adverse information.**

8) Issues with the condition of the property that arise during the final walk through. (*See* Section II, H above.)

9) The terms of the loan are not what were promised.

10) The borrowers ask you for tax or other advice.

11) Disabled borrowers. Recommend the use of a POA.

12) Borrowers who don't want any explanation and want to sign through the package as quickly as possible. At least review the key terms of the loan.

13) Borrowers who do not understand what they are signing. The borrower needs to have at least the capacity to understand the nature of the loan, the terms, and the house is standing as security.

14) Realtors who want to run the closing.

15) If a closing falls apart, determine:

a) Status of the rate lock;

b) Re-draw fees, if any, charged by the lender;

c) Status of the seller's next closing;

d) Whether the buyers have a place to live.

(Early possession agreement?)

b. Simultaneous closings.

1) Visit with lenders and realtors you work with regularly to make sure they know how important it is for you to know when the proceeds of one closing will be used for another closing that is scheduled immediately after the one you are handling.

2) Inform the lender you are closing for that you will need the funds delivered promptly.

3) Obtain wire instructions for the second closing.

**5. Prepare the filing.**

a. Double-check the marital status recital, notary signatures and stamps, and the legal description.

b. Verify that all of the documents are in recordable form.

c. Send the filing with instructions. *See Exhibit 34 for a sample.*

**D. Post-execution matters.**

1. Make sure that your account balances **before** disbursing funds.

2. Make a copy of the loan documents for yourself and provide lender with a certified copy of the mortgage. Consider the use of a stamp:

I certify that this a true and correct copy (including the following \_\_\_\_\_ pages).

\_\_\_\_\_  
*Attorney name*

Attorney at Law

Iowa State Bar No. \_\_\_\_\_

3. Release funds only on approval of lender, deposit of funds, and successful filing (if there is no pre-close search).

4. Parties who receive funds should sign for them. Consider making a stamp of the following to put on a page below a copy of the check:

I acknowledge receipt of the above funds.

X \_\_\_\_\_  
Date \_\_\_\_\_.

5. Collect information for the 1099 filings. *See* Exhibit 35 for a worksheet.
6. Do not allow third parties to deliver loan payoffs. Too much risk.
7. Trouble shooting problems.
  - a. The abstractor informs you of a bridge loan mortgage at the time of filing the deed and new mortgage. Do not release the funds until a payoff for the bridge loan can be obtained.
  - b. If the marital status has been omitted from a deed or mortgage, consider using a curative affidavit. *See* Exhibit 13.
  - c. If there is a scrivener's error in the legal description, considering using a curative affidavit. *See* Exhibit 14.
  - d. If you are resolving a defectively released mortgage, first try to force the mortgage off the title through the Title Guaranty Mortgage Force Off program. If that is not available, pull the mortgage and determine if there is a loan number on the mortgage that will assist you when contacting the person who prepared the defective release or assignment. Also, see who notarized the document and check with the Iowa Secretary of State website to track down the notary for more information.
8. Develop a system for charting the status of closed files.
9. Review the post-closing report from the abstractor. Make sure that the file copy of the title opinion documents how all mortgages and title objections were released or resolved. Issue the title policy.
10. Scan the closing files after issuing the title policies so that you can quickly access electronic versions of your files. Keep off-site backups.

## **List of Exhibits**

1. Waiver of conflict of interest in a residential real estate transaction
2. Net proceeds projection and checklist of what to do once the purchase agreement is signed
3. Escrow for deed and abstract
4. Warranty deed
5. Abstract receipt
  
6. Preliminary title opinion
7. Attorney's certificate of title
8. Sample title opinion paragraphs
9. Trustee's § 614.14 affidavit
10. Grantee's § 614.14 affidavit
  
11. Certification of trust
12. Affidavit for showing authority to convey real estate from a religious organization
13. Affidavit to show grantor's marital status
14. Affidavit to show mortgagor's marital status
15. Order *nunc pro tunc* to establish equivalence between street address and legal description in a divorce decree
  
16. Affidavit of identity to distinguish judgment debtor from titleholder or intended titleholder
17. Notice of homestead designation and demand to levy
18. Receipt for child support and/or alimony payments
19. Partial release of judgment lien
20. Affidavit for showing of no tax liability
  
21. Mortgage subordination agreement
22. Affidavit to waive first right of refusal by homeowners' association
23. Affidavit of surviving spouse
24. Affidavit of possession
25. For Sale By Owner Instructions
  
26. MNLR Search Verification
27. Escrow agreement for repairs or remaining construction
28. Limited power of attorney for borrowers
29. Exceptions for transfer tax (Iowa Code § 428A.2)
30. Letter of Instruction for closing an open-end line of credit loan

### **List of Exhibits continued**

31. Sample organizational list of a closing package
32. Closing attendance record
33. Homestead and military tax credit
34. Filing instructions
35. 1099 worksheet

Exhibit 1

**WAIVER OF CONFLICT OF INTEREST IN A  
RESIDENTIAL REAL ESTATE TRANSACTION**

IT IS AGREED between \_\_\_\_\_,  
Seller(s), whose address for purposes of this Waiver is \_\_\_\_\_,  
and \_\_\_\_\_,  
Buyer(s), whose address for purposes of this Waiver is \_\_\_\_\_,  
that Sellers and Buyers agree to waive the conflict of interest involving  
\_\_\_\_\_ (hereafter Attorney) and  
\_\_\_\_\_ (hereafter Law Firm).

**Recitals**

1. Sellers own real estate located at \_\_\_\_\_  
(hereafter Real Estate).
2. Buyers desire to purchase Real Estate.
3. Sellers desire to sell Real Estate to Buyers.
4. Sellers and Buyers desire to have the above-referenced Attorney and Law Firm represent them in said transaction (hereafter Transaction).
5. The Parties have been informed that Attorney and Law Firm are governed by Iowa Rule of Professional Conduct 32 regarding conflicts of interest.
6. The Parties have been informed that under applicable rules of professional conduct, a law firm owes each of its clients a duty of loyalty, which would normally preclude any attorney within the firm from undertaking a representation adverse to any client of the firm without the affected client's informed consent. Other rules generally prohibit a firm from undertaking any representation involving an actual or potential conflict of interest without the informed consent of all affected parties. Such a situation exists whenever a firm represents two clients simultaneously in a situation in which their interests are actually or potentially adverse.
7. The conflict of interest, and the need for informed consent, exist no matter how cordial the business relationship between the two parties currently is or is anticipated to be, and no matter how non-controversial the transaction is anticipated to be.
8. The Parties have been informed of the following, potential risks to this dual representation:

- a. Compromise in negotiations on the pricing of the real estate.
- b. Compromise in negotiations on the terms of payment and security for unpaid balances.
- c. Compromise as to warranties as to the condition of the real estate.
- d. Compromise as to the quality of title of the real estate.
- e. Compromise as to negotiations on the date of closing and the risk of loss in the interim.
- f. Compromise as to the tax consequences of the transaction.
- g. Compromise as to the Buyers' effort to secure financing.
- h. Compromise as to relations with brokers, tenants, and title insurance providers.
- i. Transaction-specific risks: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

9. **The Attorney does not recommend simultaneous representation of adverse parties, and has not recommended this simultaneous representation to the Parties. The Parties have been advised to seek separate representation. It has been recommended to each of the Parties that they seek the advice of independent counsel of their own choice regarding this written consent.**

10. The Attorney is undertaking this dual representation of the Parties with respect to this transaction only because the Parties have waived the conflict of interest.

11. If a dispute should arise in the future between the Parties concerning the Transaction or any other aspect of dealings between the Parties, the Attorney would have to withdraw, or would be disqualified, from representing either Party with regard to that dispute or any other relationship they might then have with each other. The Parties would then each have to retain separate counsel, resulting in additional expense and inconvenience that might not have been incurred had the Parties been separately represented from the outset.

**Acknowledgement and Consent**

Despite any potential or actual conflict of interest which may exist now or in the future, the Parties hereby consent to the Attorney's and Law Firm's simultaneous representation of both Sellers and Buyers with respect to the transaction described above. We further agree that the Law Firm may withdraw its representation of either client or both clients without prejudice should it determine that continued representation might violate applicable rules of professional conduct.

*Signatures by Parties*

Exhibit 2

**Net Proceeds Projection**

\$ \_\_\_\_\_ Sales price  
Less  
\$ \_\_\_\_\_ Mortgage payoff(s)  
\$ \_\_\_\_\_ Property taxes (approx. 1 year)  
\$ \_\_\_\_\_ Abstracting  
\$ \_\_\_\_\_ Transfer tax  
\$ \_\_\_\_\_ Attorney fees  
\$ \_\_\_\_\_ Realtor's commission (if any)  
\$ \_\_\_\_\_ Credit (if any) for buyers' closing costs  
\$ \_\_\_\_\_ Wire transfer / overnight for payoff  
Equals  
\$ \_\_\_\_\_ Projected net proceeds

**Checklist of What to Do Once the Purchase Agreement is Signed**

Contact the loan originator who is financing the purchase for the buyer. Tell them:

1. Your contact information.
2. You are being represented by an attorney and my contact info.
3. Your attorney will prepare the deed and other documents a week before the closing.
4. If there is a mortgage payoff, you will provide it **two weeks** before closing.
5. You expect to see the draft settlement statement called the Closing Disclosure (CD), formerly called the HUD-1, **three business days** before the closing. Use the net proceeds analysis to review the CD.



Exhibit 3

Space above for recording data

By: Attorney's Name, Att'y at Law, Attorney's address and phone number
Return Document To: <>

**Escrow for Deed and Abstract**

TO: <>, Escrow Agent.

WE HEREBY DELIVER to you in escrow the following legal documents and papers:

1. Warranty Deed dated \_\_\_\_\_, 20\_\_ for the following described real estate:

*<legal description>*

from the undersigned Seller(s) to the undersigned Buyer(s).

2. Abstract of Title for the real estate above described, continued to <>, and approved <not approved> by Buyers.

3. Real estate contract referred to below for the sale of the real estate described above (original or exact copy).

All, except the real estate contract is for delivery to said Buyers when and only when said real estate contract between Sellers and Buyers is fully performed. The delivery of this deed and abstract (if delivered) is a completed delivery and unconditional, absolute and irrevocable except under the following conditions:

- a. Forfeiture or foreclosure of the contract as provided by law.
- b. Other devolution of the title or interest in the real estate, or change in the legal status of some of the parties which makes the escrowed deed useless.
- c. All parties or their successors in interest give the escrow agent specific directions in writing canceling this escrow agreement or modifying its terms.
- d. An adjudication by any court of competent jurisdiction ordering a variance in the original terms of the escrow agreement or ordering its cancellation.

In the event of a., b., c., or d. above, the escrow shall be considered terminated and, unless otherwise ordered by the court as in d. above or directed by the agreement of the parties as in c. above, the escrowed legal documents and papers shall be returned to the Sellers, or their successors in interest, whereupon the duties of the Escrow Agent are terminated.

If the Buyers fully perform and are, at the time of such performance, entitled to the legal documents and papers as part of their chain of title, the Escrow Agent shall deliver same to Buyers. This authority shall include a delivery of the legal documents and papers to a transferee authorized in writing by Buyers.

Information in writing to Escrow Agent by either the Sellers or their representative that the Real Estate Contract is paid in full shall be complete and sufficient authority to deliver said legal documents and papers to Buyers.

The Escrow Agent shall have no responsibility whatever to see that Buyers and Sellers perform any of the terms of the contract between them, nor keep in force any insurance. Responsibility is limited to effecting the transfer of legal documents and papers as directed by this agreement.

All parties shall share any reasonable expense of the Escrow Agent for services, legal or otherwise, necessarily incurred in carrying out the agent's duties.

This escrow, power, authority, and direction may similarly be used by any and all members of your firm or successors thereof. You may at any time discharge your responsibility to the Sellers and Buyers or their respective successors in interest by  $\diamond$  days actual notice to them, or written notice addressed to their last known addresses, of your election to do so. Your responsibility will terminate upon delivery of the papers to any successor escrow agent then designated by the parties or, in default of such designation, by return of the papers to the party depositing them.

Dated \_\_\_\_\_, 20\_\_.

Sellers

Buyers

\_\_\_\_\_  
Print name:

\_\_\_\_\_  
Print name:

\_\_\_\_\_  
Print name:

\_\_\_\_\_  
Print name:

Subscribed and sworn or affirmed before me by  $\diamond$ , this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Print name here:

Notary Public in and for said State and County

## Receipt

The undersigned hereby acknowledges receipt of the above-described legal documents and papers, agrees to act as Escrow Agent for this transaction and to perform pursuant to instruction as above directed.

<Escrow Agent>

by \_\_\_\_\_  
Print name: \_\_\_\_\_ Date \_\_\_\_\_  
Print office: \_\_\_\_\_

Subscribed and sworn or affirmed before me by ◊ as ◊ for ◊, this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_.

Print name here: \_\_\_\_\_  
Notary Public in and for said State and County

Exhibit 4

Prep By: Attorney's Name, Att'y at Law, Attorney's address and phone number
Sent Tax Statement To:
Return Document To:

**Warranty Deed**

KNOW ALL PERSONS THAT BY THIS INSTRUMENT:

◇, ◇, a married couple◇ a single person◇, for valuable consideration, CONVEY(S) to: ◇, a married couple◇, as JOINT TENANTS WITH RIGHT OF SURVIVORSHIP AND NOT AS TENANTS IN COMMON, the following described real estate in ◇ County, Iowa:

*<legal description>*

**Consummation of contract**

This deed is given in consummation of a certain real estate contract recorded on ◇, in Book ◇, Page ◇, of the ◇ County Records.◇

**Exemption from transfer tax**

This deed is <SUMMARIZE THE EXEMPTION◇ and is therefore exempt under §428A.2(◇).

**Power of attorney**

The undersigned Attorney-in-Fact warrants that the principals are alive on the date the deed is delivered. If the power of attorney is triggered upon disability, the principal(s) is/are disabled.

AND the Grantor(s) do HEREBY COVENANT with the Grantee(s), and successors in interest, that Grantor(s) hold this real estate by TITLE IN FEE SIMPLE; that they have good and lawful AUTHORITY TO SELL AND CONVEY the same; that this real estate is FREE AND CLEAR OF ALL LIENS AND ENCUMBRANCES WHATSOEVER, except as may be stated above; and Grantor(s) covenant to WARRANT AND DEFEND the real estate against the lawful claims of all persons whomsoever except as may be stated above. If a spouse who is not a titleholder executes this deed, that spouse does not join in the warranties stated above, but executes solely for purposes of releasing rights of dower, homestead and distributive share.

Each of the undersigned releases all rights of dower, homestead and distributive share in and to the real estate described above. Words and phrases herein, including the

acknowledgment, shall be construed as in the singular or plural number and as masculine, feminine or neuter gender, according to the context.

*Individual capacity*

Signed \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Print name:

\_\_\_\_\_  
Print name:

State of Iowa, (<) County) SS.

This record was acknowledged before me on \_\_\_\_\_,  
20\_\_, by (<).

Print name here: \_\_\_\_\_  
Notary Public in and for said State and County

*Representative capacity*

<Grantor>

by \_\_\_\_\_  
Print name: \_\_\_\_\_  
Print office: \_\_\_\_\_

\_\_\_\_\_  
Date

State of Iowa, (<) County) SS.

This record was acknowledged before me on \_\_\_\_\_,  
20\_\_, by (<) as (<) of (<), this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Print name here: \_\_\_\_\_  
Notary Public in and for said State and County

Exhibit 5

**Abstract Receipt**

Abstract Receipt for \_\_\_\_\_ (address)  
Borrower(s) \_\_\_\_\_

Multiple Parts: Yes / No

Received By: \_\_\_\_\_ Company: \_\_\_\_\_

Date: \_\_\_\_\_

Date In      Rec'd From      Work      Lender      Date Out / Whom

Legal Description

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date Completed T.O.      Lender      Attorney      Our Matter

Exhibit 6

Writer's e-mail: ◇

<date>

*Client*

Attn.: <loan officer>

Our Matter: Borrower(s): ◇  
Property address: ◇

Dear Sir or Madam:

I have examined the abstract of title to the following described real estate located in ◇ County:

<legal description>

[select paragraph]

which abstract was initially certified by ◇ from ◇ to ◇ at ◇.M., subsequently by other abstracters and finally by ◇ to ◇ at ◇.M., consisting in all of ◇ entries.

which abstract is in ◇ parts as follows:

- a. Part I, initially certified by ◇ from ◇ to ◇, subsequently certified by ◇ to ◇, ◇ entries,
- b. Part II, subsequently certified by ◇ to ◇ at ◇.M., ◇ entries; and
- c. Part III, subsequently certified by ◇ to ◇ at ◇.M., ◇ entries, totaling ◇ entries in all.

Pencil notes by ◇ to ◇ at ◇ ◇.M., referred to as Abstract Number ◇. I reserve the right to re-examine the abstract once the pencil notes have been incorporated into the Abstract.

which abstract was certified by ◇ from ◇ to ◇ at ◇.M., consisting of ◇ entries in all.

I submit the following report concerning the abstract:

A. TITLE TO REAL ESTATE AND PROPOSED DEED◊.

1. The abstract as certified shows record title to the real estate in: ◊, a married couple, as Joint Tenants with Rights of Survivorship and not as Tenants in Common, subject to the following comments and restrictions. The following is a 24-month chain of title:

a. Entry No. ◊ shows a warranty deed to the titleholder(s) filed ◊ as Inst. No. ◊ of the county records.

2. Caution: you should review the deed and/or mortgage which will consummate your transaction to be sure that the names shown above are matched exactly on these documents. The names used by borrowers to take title should be the same exact names on the mortgage. Borrowers should sign their names exactly as they are typed on the mortgage documents and their marital status must be shown.

**If title is in one person, but the person is married, the spouse must join in executing the mortgage or deed.**

◊. A copy of the proposed deed has been submitted with the abstract. I find it to be proper in form and content, provided it is properly executed◊, with the following exceptions: ◊.

◊. Since this deed will be executed by the trustee, there must be recorded along with the deed current affidavits from both the grantor and grantee, under § 614.14, Code of Iowa.◊

a. Title is in the trustee or trustees by virtue of a deed executed by ◊, Husband and Wife◊, which was recorded on ◊ in Book ◊, Page ◊ of the county records.

B. CONTRACTS, LEASES, MORTGAGES. (WHICH MUST BE CONSUMMATED OR RELEASED, UNLESS YOU ARE TAKING YOUR INTEREST SUBJECT TO THESE ITEMS)

1. Entry No. ◊ reports the real estate is encumbered by a mortgage given to ◊ on ◊ and recorded on ◊ as Inst. No. ◊ in Book ◊, Page ◊ of the county records. The mortgage secures a loan in the amount of \$◊.

**I advise that you determine whether this mortgage is securing a line of credit that will require written instructions from the borrower in order to obtain a mortgage release.**



◇. Entry No(s). ◇ reports◇ this mortgage was ultimately◇ assigned to ◇ by an assignment recorded on ◇ as Inst. No. ◇ in Book ◇, Page ◇ of the county records.

◇. Entry No. ◇ reports the equitable title has been conveyed by real estate contract to ◇, which contract was recorded on ◇ as Inst. No. ◇ in Book ◇, Page ◇ of the county records.

C. OTHER LIENS AND OTHER ENCUMBRANCES. (WHICH MUST BE RELEASED, UNLESS YOU ARE TAKING YOUR INTEREST SUBJECT TO THESE ITEMS)

◇. Entry No. ◇ reports a judgment in favor of ◇ against ◇ entered on ◇ in ◇ Case No. ◇, Docket ◇, Page ◇ in the initial amount of \$◇ plus interest and costs. Unless the defendant named is not the same as the titleholder shown above◇ Upon recording of the deed to the proposed grantee (unless the defendant named is not the same as the grantee) this will constitute a lien against the real estate which must be paid.◇ You are advised to check with the Clerk of Court prior to closing to determine the correct amount of the judgment and the amount of any court costs which may be payable.

◇. Entry No. ◇ reports Dissolution of Marriage Case No. ◇, Docket ◇, Page ◇ in which a judgment was entered on ◇ in favor of ◇ (the Petitioner◇Respondent◇) against ◇ (the Petitioner◇Respondent◇) for child support◇ alimony◇ and other matters. I require the judgment holder, ◇, file an Affidavit which acknowledges receipt of all child support and other judgment payments due under the decree of Dissolution up to and including the date upon which your deed and/or mortgage is recorded.

1. The last continuation of the abstract shows that the abstractor has performed a standard search against the following name(s):

◇

2. Notice on Lien Search. Since a Report can never be continued to the precise time of closing, there is always a time gap between the date of continuation and the date of closing. During this time gap, matters may be filed with the Iowa Secretary of State Mechanic's Notice and Lien Registry website (<https://sos.iowa.gov/mnlr/search/search.aspx>) which affect title but which do not appear on the Report. You are advised to have the abstractor perform a lien search prior to filing your deed or mortgage and advise me of any matters appearing since the last continuation before recording.

3. I performed a search on the Iowa Secretary of State Mechanic's Notice and Lien Registry website against the legal description, address, current titleholder(s), and parcel number of the real estate. The MNLR website should be searched at the time of closing and filing the mortgage.

a. A Commencement of Work / Preliminary Notice was filed by <> on <> (MNLR #<>). **I require a lien waiver to be obtained and filed on the MNLR.**

D. TAXES, SPECIAL ASSESSMENTS. (WHICH MUST BE PAID UNLESS YOU ARE TAKING YOUR INTEREST SUBJECT TO THESE ITEMS)

1. Entry No. <> reports the real estate taxes for FY <>-<>, payable FY <>-<> and all prior years have been paid in full.

<>At the time this abstract was last continued the FY <>-<> taxes, payable FY <>-<> had not yet been certified to the County Treasurer and are therefore not shown. <>

The following taxes for FY <>-<>, payable FY <>-<> are due and payable:

- a. First install.: \$<>, due, not delinquent<>
- b. Second install.: \$<>, due, not delinquent<>

The parcel number of the real estate is: <>.

2. Entry No. <> reports there are no unpaid special assessments spread on the Treasurer's Tax List. This report includes Resolutions of Necessity passed by the governing body and certified to the Treasurer.

<>. Entry No. <> reports the following special assessments: Special Assessment No. <>, total amount \$<>, in <> installments, <> paid, <> unpaid, <> delinquent.

<>. Entry No. <> reports that the real estate was sold at Tax Sale and Tax sale Certificate No. <> issued on <>. This means that the Tax Sale Certificate must be redeemed or purchased before the expiration of the statutorily defined period or a Tax Deed will be issued to the certificate holder. You are advised to contact the County Treasurer's Office to determine the cost of redemption, the name of the Certificate holder and the procedure for redemption. In the alternative, you may wish to contact the Certificate holder and negotiate a purchase of the Certificate.

E. LEGAL DESCRIPTION AND EASEMENTS. (PRIMARILY FOR YOUR INFORMATION, UNLESS THEY CONTAIN MATTERS WHICH ARE NOT CONSISTENT WITH YOUR UNDERSTANDING OF THE TRANSACTION)

1. Entry No. <> shows the dimensions of the real estate. <> **The dimensions of the plat map are illegible. Therefore I require a showing of a legible version showing the subject real estate.** (See *Middle Road Developers, L.C. v. Windmill Design and Develop. Co.*, 746 N.W.2d 279 (Iowa Ct. App. 2008).) You are advised to familiarize yourself with the location of the corners and boundaries as they appear on the ground. Should you desire to verify these reported dimensions or boundaries you should employ a surveyor to accomplish this by competent measure.

1. The abstract does not show the dimensions of the real estate. You are advised to familiarize yourself with the location of the corners and boundaries as they appear on the ground. Should you desire to verify the dimensions or boundaries you should employ a surveyor to accomplish this by competent measure.

<>. Entry No. <> shows a utility easement given to the City of <> over, under and across the <> of the real estate relative to <>the construction and maintenance of electric lines, poles and other electrical or utility apparatus. <>a sewer or sanitary sewer system line. <>access for adjoining property.<> The easement was filed <> as Inst. No. <> of the county records.

You are therefore cautioned against the construction or erection of any permanent fences, structures or plantings within the area designated that could not readily be removed in the event the owner of the easement desired to utilize its access rights.

F. ZONING, COVENANTS AND OTHER RESTRICTIONS. (PRIMARILY FOR YOUR INFORMATION, UNLESS THEY CONTAIN MATTERS WHICH ARE NOT CONSISTENT WITH YOUR UNDERSTANDING OF THE TRANSACTION)

1. Entry No. <> reports that the real estate is subject to the restrictions of a zoning ordinance of the City of <>, which is number <>. It reports that the real estate lies within the area designated as Class <>. It does not report the zoning of the real estate, so you are advised to contact the zoning official to ascertain this information.<> You should verify both the zoning and that your proposed use of the real estate is permitted by the zoning classification.

1. The abstract does not report the zoning of the real estate, so you are advised to contact the zoning official to ascertain this information. You should verify that your proposed use of the real estate is permitted by the zoning classification.

◇. Entry No. ◇ reports the real estate is subject to certain restrictive covenants which govern the use of the real estate. For a copy of these restrictive covenants, please contact the homeowners' association. ◇**These restrictive covenants provide for automatic renewal. The automatic renewal provision will not serve to renew the covenants.** See *Compiano v. Jones*, 269 N.W.2d 459 (Iowa 1978). You should consult your real estate advisor to determine what effect, if any, the absence of these restrictive covenants may have on the marketability of the real estate. The potential unenforceability of these restrictive covenants could also have an adverse effect on your ability to obtain financing. In addition, I recommend amending the covenants to provide for extending the covenants by filing a verified claim. The covenants were filed ◇ as Inst. No. ◇ of the county records.

If this real estate is subject to restrictive covenants it may be subject to homeowner's dues or assessments. You are advised to consult the homeowner's association to determine whether any dues remain unpaid and determine whether you may become liable for their payment.

◇. Entry No. ◇ reports the real estate may be subject to certain agreements made with the County SCS. You are advised to consult that office to determine if there are any such agreements in effect.

◇. You are advised that if the real estate uses a private sewage disposal system it is subject to Iowa Department of Natural Resources rules. It may also be subject to County Board of Health rules. With certain exceptions, these rules require all such systems be inspected for compliance upon transfer of ownership. You should determine for yourself if the real estate is subject to these requirements. If an inspection is required, the deed will not be accepted by the County Recorder for recording without a report from a certified inspector or an alternate document called a "binding acknowledgment." If the real estate also uses a well for potable water, then in some counties an inspection of the well and testing of the water must also be made upon transfer of ownership.

G. CAUTIONS. You are strongly advised to review the cautions shown on the attached sheet and make the inquiries noted.

Very truly yours,

◇

by

◇

Iowa Title Guaranty No. ◇

CAUTIONS. An abstract of title is a multi-page document typically prepared by a commercial abstracting firm. It consists of numbered entries containing information abstracted from the public records on file in the county courthouse that affect the title to the real estate described in the abstract of title. However, these public records do not necessarily disclose all rights in, claims against or restrictions upon the real estate. Therefore, you should make a careful inspection of the real estate and make diligent inquiry to satisfy yourself as to the following additional matters:

1. The rights of any person in actual possession of the real estate such as a tenant in possession under a lease agreement.
2. The rights, under the Iowa mechanic's lien law, of persons who have furnished labor or materials in the past 90 days for improvements to the real estate.
3. The rights of creditors under the Iowa Uniform Commercial Code to a security interest in improvements to the real estate in the form of fixtures, such as a furnace or water heater, which have been installed so recently as to allow the creditor to file notice of such rights after the period of time covered by the abstract.
4. Unpaid charges for public utility services furnished to the real estate which may become a claim against the real estate.
5. The existence of any security interest in growing farm crops disclosed by financing statements filed in the office of the Iowa Secretary of State.
6. The existence of any easement over the real estate which is apparent from physical evidence of its use or the actual location of the boundary lines of the real estate.
7. Any encroachment upon the real estate from adjacent real estate by way of third party use or by building overlapping the boundary lines and any other facts that may be disclosed by a survey.
8. Availability of reasonable and convenient access to the real estate from an existing public right of way.
9. Any law, ordinance or governmental regulation (including but not limited to zoning, subdivision and rental housing ordinances, which are state or local laws, or Federal laws such as the Americans with Disabilities Act or the laws restricting discrimination in housing) restricting, regulating or prohibiting the occupancy, use or enjoyment of the real estate, or regulating the character, dimensions or location of any improvement now or hereafter erected on the real estate, or prohibiting a separation in ownership or a reduction in the dimensions or area of the real estate. For such information, you should consult the local building and zoning officials having jurisdiction or the Federal agencies having jurisdiction.
10. The legal competency (as affected by age or mental disability) of each individual titleholder executing a deed, mortgage or other instrument affecting the real estate; the authority of each person executing a deed, mortgage or other instrument affecting the real estate in a representative or fiduciary capacity; and the authenticity of all signatures appearing on such instruments.
11. Any other matter affecting the real estate which may have been filed as a part of the public records in the county courthouse after the period of time covered by this Title Opinion.
12. To the extent the premises in the caption may include real estate caused by action of any riparian waters, no opinion is expressed as to the marketability of title including accretions to such real estate.
13. There are matters which can only be satisfactorily determined by a survey. The plat or survey shown in the abstract, if one is shown, normally does not show the location of improvements with respect to the boundary lines. Buyers are encouraged to have a site survey (sometimes referred to as an "as built" survey) done to locate any improvements with respect to the boundary lines. This site survey could be recorded to benefit both the buyer and the future buyers of the real estate. A site survey should reveal such problems as encroachments on the property, improvements built too close to or even over the boundary line and substandard lot size. Improvements not meeting zoning requirements may be considered nonconforming uses under applicable zoning and building codes. An owner may be prohibited from or restricted in rebuilding a nonconforming use under applicable zoning or building codes. A nonconforming use may also jeopardize the amount of recovery under the owner's insurance policy. A nonconforming use may also prevent a buyer from obtaining a mortgage on the property.
14. The abstract does not disclose the existence of hazardous substances, pollutants, contaminants, hazardous wastes, underground storage tanks, drainage wells, active or abandoned water wells, and other

environmentally regulated activities. You are cautioned that federal, state and local legislation may, in the event there are environmental or public health violations, permit injunctive relief and require removal and remedial actions or other "clean-up." The cost of such "clean-up" may become a lien against the real estate, and you may have personal liability even though you may not have disposed of any hazardous substances, pollutants, contaminants, or hazardous wastes on the real estate or used any underground storage tanks or wells.

Exhibit 7

**Attorney's Certificate of Title**

TO: ◊  
and its successors in interest

We hereby certify we have examined the Abstract of Title, which begins with the Government Entry, Plat or Root of Title to real estate described as follows:

*<legal description>*

from the date shown in our original Title Opinion through the last continuation, which has been certified by ◊ to ◊ at ◊ o'clock ◊.M., which abstract we deem sufficiently complete and reliable for examination; subject, however to the Cautions shown on our original Title Opinion.

We certify that the last continuation of the abstract shows that the real estate described above has been conveyed by the prior titleholders to ◊, Husband and Wife◊ a single person.◊

We further certify that the mortgage dated ◊, made and executed by ◊, Husband and Wife◊ a single person◊ to you in the amount of \$◊, recorded on ◊ as Inst. No. ◊ in Book ◊, Page ◊ of the mortgage records of the above county (which mortgage is shown at Entry No. ◊ of the abstract) constitutes a valid first and paramount mortgage lien on the said real estate. Entry No. ◊ reports this mortgage was assigned to ◊ by an assignment recorded ◊ as Inst. No. ◊ in Book ◊, Page ◊ of the county records.◊

It is my opinion that the above-described lien is subordinate to the mortgage you intend to issue a Title Guaranty Certificate upon. This is because the mortgage is marked "purchase money mortgage" and because all of the funds advanced upon this mortgage were actually used to purchase the property or to pay for the costs in connection with the purchase. Purchase money mortgages are superior to liens against the purchaser pursuant to Iowa Code § 542.12(B).

We further certify that all taxes and assessments against the real estate are paid up to and including the following:

- a. FY ◊, FY ◊ first instal.: \$◊, due, not delinquent◊
- b. " second instal.: \$◊, due, not delinquent◊

Dated ◊

Very truly yours,

◇

by

◇

Iowa Title Guaranty No. ◇



## Exhibit 8

### Sample title opinion paragraphs

#### **Development agreement and the need for a building permit (Section C)**

◇. Entry No. ◇ reports the real estate is encumbered by a Developers Agreement entered into with the City of ◇, which was recorded on ◇ as Inst. No. ◇ of the county records. This Agreement provides for liens and covenants which run with the land. It also states “This covenant shall not be binding with respect to any officially platted lot for which a City building permit has been issued.” **The developer should provide a letter in advance of the closing that the improvements have been made.**

If no building permit has been issued with respect to the above lot prior to the recording of your mortgage, your mortgage will be subordinate to this encumbrance to the City of ◇. **The developer should provide a letter in advance of the closing that the improvements have been made.**

◇. Entry No. ◇ shows an agreement with the City of ◇ for the construction of sidewalks and the planting of trees. The instrument was filed ◇ as Inst. No. ◇ of the county records. If the sidewalks have not been constructed or the trees not planted, this could prevent the issuance of or cause the revocation of an occupancy permit. **The developer should provide a letter in advance of the closing that the improvements have been made.**

#### **24 months to install (Section F)**

◇. Entry No. ◇ shows an agreement with the City of ◇ for the construction of sidewalks and the planting of trees. The instrument was filed ◇ as Inst. No. ◇ of the county records. **Note that the sidewalks and trees must be installed no later than 24 months from the date of issuing the occupancy permit otherwise the occupancy permit may be revoked.**

#### **Paragraph showing title in an executor or administrator of an estate (Section A)**

◇. The abstract as certified shows record title to the real estate in: ◇, **as Executor / Administrator of the Estate of ◇, Deceased**, subject to the following comments and restrictions. Entry No. ◇ reports that the requirements of Title Standard 9.12 have been met.

#### **Child support for college (Section C)**

◇. Entry No. ◇ reports Dissolution of Marriage Case No. ◇, in which a judgment was entered on ◇ in favor of ◇ (a child whose date of birth is ◇) against ◇

(the Petitioner) for support for post-secondary education pursuant to Iowa Code § 598.1. Iowa Code § 598.1(8) indicates that this obligation may be required:

for educational expenses of a child who is between the ages of eighteen and twenty-two years if the child is regularly attending a course of vocational-technical training either as a part of a regular school program or under special arrangements adapted to the individual person's needs; or is, in good faith, a full-time student in a college, university, or community college; or has been accepted for admission to a college, university, or community college and the next regular term has not yet begun.

I require the judgment holder,  $\diamond$ , file an Affidavit which acknowledges receipt of all support for post secondary education due under the decree of Dissolution up to and including the date upon which your deed and/or mortgage is recorded.

#### **Child support owed (Section C)**

In the alternative, the abstractor show that the Petitioner has paid \$ $\diamond$  in child support from  $\diamond$  to  $\diamond$ . The judgment requires payments of \$ $\diamond$  per month. Therefore, the Petitioner would owe \$ $\diamond$  through the month of  $\diamond$ . If the Petitioner pays \$ $\diamond$  and you record your mortgage in  $\diamond$ , then this objection would be satisfied.

#### **Plat of Survey legal (Caption)**

Parcel " $\diamond$ " in the  $\diamond$  1/4 of the  $\diamond$  1/4 of Section  $\diamond$ , Township  $\diamond$  North, Range  $\diamond$  West of the 5<sup>th</sup> P.M.,  $\diamond$  County, Iowa, as shown in the Plat of Survey, recorded  $\diamond$  as Inst. No.  $\diamond$  of the  $\diamond$  County records.

#### **Condo Declaration (Section F)**

$\diamond$ . Entry No.  $\diamond$  reports the Declaration of Submission of Property to Horizontal Property Regime filed  $\diamond$  as Inst. No.  $\diamond$  of the county records. This document governs the use of the real estate. You should carefully review this document and make appropriate inquiries if you have any questions concerning its effect on your use of the real estate.

Note that the real estate may be subject to homeowner's dues or assessments. You are advised to consult the homeowner's association to determine whether any dues remain unpaid and determine whether you may become liable for their payment.

**Stray mortgage (Section B)**

Pursuant to Iowa Land Title Standard 4.5, **I require the following:**

- ◇.
- 1) An affidavit or disclaimer showing no interest in the property from  
and
  - 2) A release of the mortgage.

OR

3) If neither (1) or (2) can be obtained, then an affidavit of a person having personal knowledge of the facts.

**Stray deed (Section A)**

Pursuant to Iowa Land Title Standard 4.5, **I require one of the following:**

- 1) An affidavit or disclaimer showing no interest in the property from the grantee of the deed;
- 2) A corrected deed setting out the true facts and stating that the description in the prior deed was in error;
- 3) If neither (1) or (2) can be obtained, then an affidavit of a person having personal knowledge of the facts.

**Environmental Lien Language (Section F)**

This abstract does not contain any environmental protection liens recorded in the land records created under the State statute for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge or filed in the federal district court for the district in which the property is located, if there is a federal district court in the county where the property is located. Other than Iowa Code Section 455B.396, there is no Iowa statute in effect on the date of the abstract that could provide an environmental lien that could gain priority over the lien on the property that is subject of this abstract.

Exhibit 9

Space above for recording data

By: Attorney's Name, Att'y at Law, Attorney's address and phone number
Return Document To: <>

**Affidavit in re  
Real Estate Located in <> County, Iowa  
Described as follows:**

*<legal description>*

State of Iowa, <> County) SS.

I/We, <>, being first duly sworn or affirmed do hereby depose and state of our personal knowledge that:

1. We are the trustees under the trust dated <>, to which the above described real estate was conveyed to the trustees by <>, pursuant to an instrument recorded on <>, in the office of the <> County Recorder in Book <>, Page <> or as Inst. No. <>.
2. We are the presently existing trustees under the trust and are authorized to convey the above-described real estate, without any limitation or qualification whatsoever.
3. The trust is in existence and I/we as trustees am/are authorized to transfer the interests in the real estate as described in paragraph 2, free and clear of any adverse claims.
4. The grantors of the Trust are alive.
5. The Trust is revocable or, if the trust is irrevocable, none of the beneficiaries of the trust are deceased.
6. This affidavit is given pursuant to § 614.14, Code of Iowa.

\_\_\_\_\_ print name:

\_\_\_\_\_ Date

Subscribed and sworn or affirmed before me by <>, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Print name here: \_\_\_\_\_

Notary Public in and for said State and County

Exhibit 10

Space above for recording data

By: Attorney's Name, Att'y at Law, Attorney's address and phone number
Return Document To: <>

**Affidavit in re  
Real Estate Located in <> County, Iowa  
Described as follows:**

*<legal description>*

State of Iowa, <> County) SS.

I/We, <grantee>, being first duly sworn or affirmed do hereby depose and state of my/our personal knowledge that:

1. I/We am/are the grantee(s)<>vendee(s) of the deed<>contract dated <>, by which the above described real estate was conveyed to me by <>, pursuant to an instrument to be recorded in the office of the <> County Recorder.
2. In connection with the delivery of this deed to me, the Trustee(s) executing the deed<>contract<> provided me with an Affidavit which states the following, or substantially the following:
  - a. I/We am/are the presently existing trustee(s) under the trust and am/are authorized to convey the above-described real estate, without any limitation or qualification whatsoever.
  - b. The trust is in existence and I/we as trustee(s) am/are authorized to transfer the interests in the real estate as described above, free and clear of any adverse claims.
  - c. This affidavit is given pursuant to §614.14, Code of Iowa.
3. I have relied on this Affidavit in accepting this deed<>contract<>.
4. I have no notice or knowledge of any adverse claims which will arise out of the execution and recording of the deed<>contract from the trustee.

\_\_\_\_\_

print name: \_\_\_\_\_ Date \_\_\_\_\_

Subscribed and sworn or affirmed before me by <>, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Print name here: \_\_\_\_\_  
Notary Public in and for said State and County



NOTICE TO RECIPIENT: THE IOWA CODE CONTAINS THE FOLLOWING PROVISION REGARDING COPIES OF A TRUST AGREEMENT:

633A.4604. Certification of trust

**1. A trustee may present a certification of trust to any person in lieu of providing a copy of the trust instrument to establish the existence or terms of the trust.**

2. The certification must contain a statement that the trust has not been revoked, modified, or amended in any manner which would cause the representations contained in the certification of trust to be incorrect and must contain a statement that it is being signed by all of the currently acting trustees of the trust and is sworn and subscribed to under penalty of perjury before a notary public.

3. A certification of trust need not contain the dispositive provisions of the trust which set forth the distribution of the trust estate.

4. A person may require that the trustee offering the certification of trust provide copies of those excerpts from the original trust instrument and amendments to the original trust instrument which designate the trustee and confer upon the trustee the power to act in the pending transaction.

5. A person who acts in reliance upon a certification of trust without knowledge that the representations contained in the certification are incorrect is not liable to any person for so acting and may assume without inquiry the existence of the facts contained in the certification. Knowledge shall not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying upon the trust certification. A transaction, and a lien created by a transaction, entered into by the trustee and a person acting in reliance upon a certification of trust is enforceable against the trust assets.

**6. A person making a demand for the trust instrument in addition to a certification of trust or excerpts shall be liable for damages, including attorney fees, incurred as a result of the refusal to accept the certification of trust or excerpts in lieu of the trust instrument if the court determines that the person acted unreasonably in requesting the trust instrument.**

7. This section does not limit the rights of beneficiaries to obtain copies of the trust instrument or rights of others to obtain copies in a proceeding concerning the trust.

Exhibit 12

Space above for recording data

By: Attorney's Name, Att'y at Law, Attorney's address and phone number
Return Document To: <>

**Affidavit in re  
Real Estate Located in <> County, Iowa  
Described as follows:**

*<legal description>*

State of Iowa, <> County) SS.

I, <>, Recording Clerk for <name of church>, being first duly sworn or affirmed do hereby depose and state on behalf of said <name of church>, that:

1. By a special business meeting on \_\_\_\_\_, <name of church>, duly elected <name>, <name of office>, and <name>, <name of office>, as qualified representatives of said <name of church>, to convey the above-captioned real estate.

*<name of church>*

By \_\_\_\_\_ Date \_\_\_\_\_  
 <>, Recording Clerk

Subscribed and sworn or affirmed before me by <> as Recording Clerk of <name of church>, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Print name here: \_\_\_\_\_  
 Notary Public in and for said State and County



Exhibit 13

Space above for recording data

By: Attorney's Name, Att'y at Law, Attorney's address and phone number
Return Document To: <>

**Affidavit in re  
Real Estate Located in <> County, Iowa  
Described as follows:**

*<legal description>*

State of Iowa, <> County) SS.

I, <>, being first duly sworn or affirmed, do hereby depose and state of my personal knowledge that:

1. A warranty deed was given by <> which conveyed the above-described real estate. The warranty deed was dated <> and recorded <> in Book <>, Page <> or Inst. No. <> of the county records. The deed did not recite the marital status of the grantor(s).

2. At the time of the execution and delivery of said warranty deed, <> was a single person or <> and <> were a married couple.

\_\_\_\_\_ print name:

\_\_\_\_\_ Date

Subscribed and sworn or affirmed before me by <>, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Print name here: \_\_\_\_\_

Notary Public in and for said State and County

Exhibit 14

Space above for recording data

By: Attorney's Name, Att'y at Law, Attorney's address and phone number
Return Document To: <>

**Affidavit in re  
Real Estate Located in <> County, Iowa  
Described as follows:**

*<legal description>*

State of Iowa, <> County) SS.

I, <>, being first duly sworn or affirmed, do hereby depose and state of my personal knowledge that:

1. A mortgage was given by <> and <> which encumbered the above-described real estate. The mortgage was dated <> and recorded <> in Book <>, Page <> or Inst. No. <> of the county records. The mortgage did not recite the marital status of the mortgagors.

2. At the time of the execution and delivery of said mortgage, <> and <> were single persons / a married couple. [*Modify as needed.*]

\_\_\_\_\_ print name:

\_\_\_\_\_ Date

Subscribed and sworn or affirmed before me by <>, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Print name here: \_\_\_\_\_

Notary Public in and for said State and County

Exhibit 15

IN THE IOWA DISTRICT COURT FOR <> COUNTY

IN RE: THE MARRIAGE OF <> and <>

UPON THE PETITION OF

<>,  
Petitioner,

:  
:  
: Equity No. \_\_\_\_\_  
:  
:

AND CONCERNING

<>,  
Respondent.

:  
:  
: Order Nunc Pro Tunc  
:  
:  
:

---

IT IS THE ORDER OF THIS COURT that the Order dated <>, should reflect that the legal description of the real estate located at <the street address>, is the equivalent of <legal description>.

Exhibit 16

Space above for recording data

By: Attorney's Name, Att'y at Law, Attorney's address and phone number
Return Document To: <>

**Affidavit in re  
Real Estate Located in <> County, Iowa  
Described as follows:**

*<legal description>*

State of Iowa, <> County) SS.

I, <>, currently of <>, Iowa, being first duly sworn or affirmed do hereby depose and state of my personal knowledge that:

1. I am acquainted with <>, currently of <>, Iowa.
2. The following judgments are of record in the <> County Clerk of Court:
  - a. On <>, 20\_\_\_, a judgment was entered in <> County Case No. <>, against <>.
  - b. On <>, 20\_\_\_, a judgment was entered in <> County Case No. <>, against <>.
  - c. On <>, 20\_\_\_, a judgment was entered in <> County Case No. <>, against <>.
3. According to the <> County Clerk of Court's files, the address of <> named in the above-referenced judgments was <> and his year of birth is <>.
4. <> has never lived in <> and his year of birth is <>. [*Note that you cannot use the social security number as a distinguishing characteristic.*]
5. I hereby state that the references to <> in the above-referenced judgments do not refer to one and the same person as <>, currently of <>, Iowa.

\_\_\_\_\_  
print name:

\_\_\_\_\_  
Date

Subscribed and sworn or affirmed before me by <> on <> \_\_\_\_\_, 20\_\_\_.

\_\_\_\_\_  
Notary Public in and for said State and County

Exhibit 17

IN THE IOWA DISTRICT COURT FOR <> COUNTY

<>	Plaintiff,	:	Case No. <>
		:	
	vs.	:	Notice of Homestead
		:	Designation and Demand to
<>	Defendant.	:	Levy (Iowa Code § 624.23)
		:	and Proof of Service
		:	

TO PLAINTIFF:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

TO ATTORNEY OF RECORD:

\_\_\_\_\_

Attorney at Law

\_\_\_\_\_

\_\_\_\_\_

YOU AND EACH OF YOU ARE HEREBY NOTIFIED that the undersigned declares that the following real estate is or has been the homestead of the undersigned and FURTHER RESPECTFULLY DEMANDS that you levy execution of the judgment created in this matter against the following real estate, located in <> County, Iowa, within thirty (30) days from the date of service of the demand:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Parcel Identification Number: \_\_\_\_\_.

If you fail to levy within thirty (30) days from the date of service of the demand, the lien and all benefits derived from the lien as to said real estate alleged to be or to have been homestead, SHALL BE FORFEITED.

The undersigned, being first duly sworn or affirmed do hereby depose and state of our personal knowledge that:

1. We make this affidavit from our personal knowledge for purposes of establishing of record, pursuant to § 624.23(2) of the Code of Iowa, certain facts known to us and affecting the chain of title to the above-described real property situated in ◊ County, Iowa.

2. The above-described real estate was conveyed to ◊ and ◊, a married couple, by a warranty deed filed ◊ as Inst. No. ◊, of the ◊ County records.

3. From the time we purchased the above-described real estate through the present, we have occupied the premises habitually and in good faith as our homestead.

4. The property is within the city limits of the City of ◊, Iowa, and does not exceed one-half acre in extent and its value is exceeds \$500.

5. Our homestead does not embrace more than one dwelling house or any other buildings.

6. The debt to the Plaintiff on this Notice was contracted subsequent to our acquisition of the property as our homestead, and said debt was not incurred for work done or material furnished exclusively for the improvement of the homestead.

As a result of the above-described real estate being our homestead property, the above-referenced judgment does not attach as a lien affecting the real estate. *Baratta v. Polk County Health Services, Inc.*, 588 N.W.2d 107, 113 (Iowa 1999).

\_\_\_\_\_  
◊

\_\_\_\_\_  
Date

\_\_\_\_\_ Date \_\_\_\_\_

State of Iowa, County of \_\_\_\_\_) SS:

Subscribed and sworn or affirmed before me by <> on <> \_\_\_\_\_,  
20\_\_.

\_\_\_\_\_  
Notary Public in and for said State and County

Original sent by certified mail to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Copy sent by certified mail to:

\_\_\_\_\_  
Attorney at Law  
\_\_\_\_\_  
\_\_\_\_\_

Copy of demand and certified mail receipt filed with the <> County Clerk of Court.

Proof of Service

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on \_\_\_\_\_, 20\_\_.

By: [ ] U.S. Mail [ ] FAX  
[ ] Hand Delivered [ ] Overnight Courier  
[X] Certified Mail [ ] Other

Signature \_\_\_\_\_

Exhibit 18

IN THE IOWA DISTRICT COURT FOR <> COUNTY

IN RE: THE MARRIAGE OF <> and <>

UPON THE PETITION OF

<>, Petitioner,

AND CONCERNING

<>, Respondent.

:  
: Equity No. <>  
:  
:  
:  
: Receipt for Payments  
:  
:

---

State of Iowa, <> County) SS.

COMES NOW <petitioner> <respondent>, Petitioner<>Respondent<> in the above matter and acknowledges that all payments for child support ordered by the Court in the Decree entered in the above matter on <>, have been paid through that due <>. I do not acknowledge payment of any amounts after those due <>. **This receipt is in full release and satisfaction of this judgment. Nothing further is owed to me in this matter.**<>

<legal description>.

Parcel number:

\_\_\_\_\_  
<petitioner> <respondent>

\_\_\_\_\_  
Date

Subscribed and sworn or affirmed before me by <petitioner> <respondent>, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public in and for  
said State and County



Exhibit 19

IN THE IOWA DISTRICT COURT FOR <> COUNTY

IN RE: THE MARRIAGE OF <> and <>

UPON THE PETITION OF

<>

Petitioner,

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

Equity No. <>

AND CONCERNING

<>

Respondent.

Release of judgment lien

State of Iowa, <> County) SS.

COMES NOW <>, Petitioner/Respondent<> in the above matter and the present holder of judgments ordered by the Court in the Decree entered in the above matter on <>, 20\_\_ , and does hereby release the following described real estate from all liens in her/his<> favor:

<>

This instrument constitutes a release of the lien of said judgments only as to the real property described above and shall not affect the lien of said judgments on the remaining real estate subject to the judgments, which shall remain in full force and effect.

\_\_\_\_\_ print name:

\_\_\_\_\_ Date

Subscribed and sworn or affirmed before me by <> on <>  
\_\_\_\_\_, 20\_\_ .

\_\_\_\_\_  
Notary Public in and for said State and County

Exhibit 20

Space above for recording data

By: Attorney's Name, Att'y at Law, Attorney's address and phone number

**Affidavit in re  
Real Estate Located in <> County, Iowa  
Described as follows:**

*<legal description>*

State of Iowa, <> County) SS.

I, <>, being first duly sworn or affirmed, do hereby depose and state of my personal knowledge that:

1. I am an attorney practicing in <>, Iowa.
2. I am familiar with the estate of <>, who died on <>, as I was the designated attorney for said estate proceedings.
3. The gross value of <>'s Estate for Federal Estate Tax purposes (including but not limited to: real and personal property (both exempt and nonexempt); transfers in contemplation of death, transfers with a retained interest, and powers of appointment; life insurance payable to or for the estate, or in which the decedent possessed an incident of ownership) is less than the amount allowed by the Unified Credit for Federal Estate and Gift Taxes (Federal Estate Tax Exemption Equivalent), as reduce by the amount allowable as credit s for any prior gifts by the decedent, and that all of the assets passed by form of ownership to the surviving spouse, children, or step-children, and therefore no Federal Estate Tax or Iowa Inheritance Tax Returns need be filed.

\_\_\_\_\_  
Print name:

\_\_\_\_\_  
Date

Subscribed and sworn or affirmed before me by <> on <>  
\_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for said State and County

Exhibit 21

Space above for recording data

By: Attorney's Name, Att'y at Law, Attorney's address and phone number
Return Document To: <>

**Mortgage Subordination Agreement**

KNOW ALL PERSONS BY THIS INSTRUMENT that the undersigned, <>, Mortgagee of the mortgage hereinafter described, does hereby subordinate said mortgage as recited below:

- a. Mortgagee is the owner and holder of a certain note dated <>, secured by a certain mortgage made by <> (hereafter Mortgagors) to Mortgagee, dated <> and recorded <> as Inst. No. <> of the <> County recorder's office, and covering the following described property:

<>

- b. Mortgagors gave a mortgage to <> (hereafter Lender) dated <> and recorded <> as Inst. No. <> of the <> County recorder's office, and covering the above-described property.
- c. To induce Lender to make such a loan, it is necessary that the mortgage held by Mortgagee be subordinated to the lien of the mortgage made by Lender as set forth above.

For the reasons set forth above, and in consideration of the mutual covenants and promises of the parties hereto, Mortgagee subordinates its mortgage as follows:

1. Subordination. Mortgagee hereby covenants, consents, and agrees with Lender that the above-mentioned mortgage held by Mortgagee is and shall continue to be subject and subordinate in lien to the lien of the mortgage made by Lender as described above.
2. Consideration. In consideration of Mortgagee so subordinating the mortgage held by Mortgagee to the mortgage made to the Lender, Lender made the above-described loan and, in further consideration, paid the sum of one dollar and other valuable consideration to Mortgagee.

3. Binding Effect. This agreement shall be binding upon and inure to the benefit of the respective heirs, legal representatives, successors, and assigns of the parties hereto.

Mortgagee

by \_\_\_\_\_

Print name: \_\_\_\_\_

Print office: \_\_\_\_\_

\_\_\_\_\_ Date

State of Iowa, (<> County) SS.

Subscribed and sworn or affirmed before me by (<> as (<> of (<> on (<>  
\_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public in and for said State and County

Exhibit 22

Space above for recording data

By: Attorney's Name, Att'y at Law, Attorney's address and phone number
Return Document To: <>

**Affidavit: Waiver of First Refusal  
in re  
Real Estate Located in <> County, Iowa  
Described as follows:**

*<legal description>*

State of Iowa, <> County) SS.

WHEREAS, the Declaration of Submission to Horizontal Property Regime for <> (hereinafter "Declaration") dated <>, was filed of record <>, as Inst. No. <> of the <> County Recorder's Office.

WHEREAS, paragraph <> of said Declaration grants an option to exercise a right of first refusal to <> (the "Association") as more particularly set forth therein; and

WHEREAS, the above legally-described unit is to be sold, given as a gift, devised, leased or otherwise transferred from the Unit Owner: <>

NOW, THEREFORE, the Association hereby expressly waives, relinquishes and releases any and all option rights in and to the real estate described above set forth in Paragraph <> of the Declaration with respect to this specific ownership transfer; the transferring Unit Owner for the transfer is listed as: <>.

I further certify that all Association assessments have been paid to and including the month of \_\_\_\_\_, 20<>.

*<Homeowners Association>*

by \_\_\_\_\_  
 Print name: \_\_\_\_\_ Date \_\_\_\_\_  
 Print office: \_\_\_\_\_

Subscribed and sworn or affirmed before me by <> as <> of <>, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Print name here: \_\_\_\_\_  
 Notary Public in and for said State and County

Exhibit 23

Space above for recording data

By: Attorney's Name, Att'y at Law, Attorney's address and phone number
Return Document To: <>

**Affidavit of Surviving Spouse**

State of Iowa, <> County) SS.

I, <>, being first duly sworn or affirmed, do hereby depose and state of my personal knowledge that:

1. I am the surviving spouse of <>, who died on <>.
2. The following described real estate was owned only by <> and <>, as joint tenants with full rights of survivorship at the time of <>'s death:  
*<legal description>*
3. The deed creating said joint tenancy was filed <>, as Inst. No. <> of the county records.
4. I hereby request that the Auditor enter this information on the transfer books pursuant to section 558.66 of the Iowa Code.
5. I have consulted with a qualified attorney licensed to practice law in the State of Iowa, having advised and informed that attorney of the nature and full extent of the property owned by <> at the time of decedent's death on <>, and have been advised by that attorney that no liability exists for Federal Estate and Gift Tax or Iowa Estate or Inheritance Tax.

\_\_\_\_\_  
Print name: \_\_\_\_\_

\_\_\_\_\_  
Date

Subscribed and sworn or affirmed before me by <>, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for said County and State

Exhibit 24

Space above for recording data

By: Attorney's Name, Att'y at Law, Attorney's address and phone number
Return Document To: <>

**Affidavit of Possession in re  
Real Estate Located in <> County, Iowa  
Described as follows:**

*<legal description>*

State of Iowa, <> County) SS.

The undersigned first being duly sworn (or affirmed) upon oath deposes and states that <> are now the record titleholders of the above-described real estate.

The undersigned further states that <> are now in complete, actual, and sole possession of all of said real estate except as may be herein stated. This affidavit is made from the personal knowledge of the undersigned who is familiar with the real estate, its titleholders, and its parties in possession; and is for the purpose of confirming title to the above-described real estate under the provisions of Iowa Code § 614.17, and other statutes relative thereto.

Words and phrases herein, including jurat and marginal entry hereof, shall be construed as in the singular or plural number, and as masculine, feminine, or neuter gender according to the context.

\_\_\_\_\_ Date \_\_\_\_\_  
 Print name: \_\_\_\_\_

Subscribed and sworn or affirmed before me by <>, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
 Print name here: \_\_\_\_\_  
 Notary Public in and for said State and County

**Power of Attorney**

The undersigned, owner in possession of the property described above, hereby directs that this affidavit be filed of record and hereby appoints the County Recorder of the County wherein the land is situated as the authorized attorney in fact to file the same.

Owner in Possession

\_\_\_\_\_  
Print name: \_\_\_\_\_

\_\_\_\_\_  
Date

State of Iowa, <> County) SS.

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me a Notary Public in and for said County and State, personally appeared <>, to me known to be the identical persons named in and who executed the foregoing instrument, and acknowledged that they executed the same as their voluntary act and deed.

\_\_\_\_\_  
Notary Public in and for  
said State and County

**Marginal Entry**

State of Iowa, <> County) SS.

The undersigned Recorder in and for <> County, Iowa, hereby certifies that the foregoing affidavit was filed in the Recorder's Office by the owner in possession as named in said affidavit or by his attorney in fact as shown by the records; and duly recorded and entered on the records thereon on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

<> County Recorder

\_\_\_\_\_  
Print name: \_\_\_\_\_

\_\_\_\_\_  
Date



Exhibit 25

**Instructions to a Party Selling Real Estate Without  
an Agent or Attorney**

The following documents need to be provided to me as the closing attorney no later than **two weeks** in advance of the closing:

1. Warranty deed (should be prepared by an attorney).
2. Declaration of Value (should be prepared by an attorney).
3. Groundwater Hazard Statement (should be prepared by an attorney).
4. Title Guaranty Composite Mortgage Affidavit (should be prepared by an attorney).
5. Power of Attorney (if one is used, it should be prepared by an attorney).
6. Payoff statement from each mortgage holder. The payoff needs to include the interest per diem.
7. Invoices for any bills you would like to have paid out of your proceeds (assuming there are proceeds). *E.g.*, abstracting, attorney fees.
8. Instructions with what to do with your proceeds. The proceeds can be mailed, picked up, or wire transferred to your account.
9. Instructions on how to provide you with a draft of the settlement statement (called the Closing Disclosure (CD)) to review (preferably by e-mail). You will need to sign the final CD. We do not need an original signature.
10. You are responsible for addressing any title problems that are presented in the preliminary title opinion. Examples of such problems include unpaid judgments, liens, child support, alimony, court costs, estate matters, unpaid taxes, and boundary matters.
11. You do not need to obtain the real estate tax proration. We will prepare this.

I also recommend that you consider the following:

1. Make sure all arrangements for the transfer of keys, garage door openers, etc. are resolved well in advance of the closing.
2. Allow enough time between the final walk-through inspection and the closing to resolve any matters that come up during the walk through.
3. **Obtain legal counsel to review your rights and obligations as the seller and to assist you with document preparation.**

Please call me if you have any questions.

Exhibit 26

**MNLR Search Verification**

Borrower(s) \_\_\_\_\_

Address \_\_\_\_\_

Instructions: Initial the line to verify the search was performed. This form stays with the closing file.

<b>Search term</b>	<b>Title opinion</b>	<b>Closing</b>	<b>Filing of refi. mtg.</b>
Legal description	_____	_____	_____
Tax id number	_____	_____	_____
Property address	_____	_____	_____
Owner	_____	_____	_____
Date & time of search	_____	_____	_____

**Filings found**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Exhibit 27

**Escrow Agreement**

Postponed or Uncompleted Improvements or Repairs

Seller(s): \_\_\_\_\_  
Buyer(s): \_\_\_\_\_  
Builder(s): \_\_\_\_\_  
Escrow Agent: \_\_\_\_\_

Property Address: \_\_\_\_\_  
Legal Description: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The undersigned agree as follows:

1. **Work and costs.** The following items remain to be completed by the \_\_\_\_\_ (referred to as “Responsible Party”) and shall be known as the “work”:

	To be completed	Estimated Cost
a.	_____	\$ _____

2. **Purpose of agreement.** The purpose of this Escrow Agreement is to allow \_\_\_\_\_ to close Buyers’ mortgage loan prior to completion of the above-described work and to insure the prompt completion of said work.

3. **Deadline for completion and amount held in escrow.** The Responsible Party agrees to complete the above work no later than \_\_\_\_\_. If the work is not completed by this date, the Escrow Agent may employ any third party satisfactory to it for the purpose of completing any or all of the above items of work. In order to secure the Responsible Party’s performance and the completion of the above items in a timely and satisfactory manner, Escrow Agent or its agent shall hold in escrow 150% of the estimated cost of completion, or \$\_\_\_\_\_ of the Responsible Party’s proceeds in a non-interest bearing account. The Escrow Agent may use any portion or all of the funds held in escrow for the purpose of paying any third party employed by Escrow Agent in accordance with the terms of this agreement.

4. **Mechanic's liens.** The Responsible party shall be personally liable for the satisfactory completion of the work, including waiver or discharge of any mechanic's lien in connection therewith.

5. **Inspection upon completion.** When the work is completed, Responsible Party shall notify the Escrow Agent and Buyer. The items of work shall then be inspected to determine whether all of the work required herein has been satisfactorily completed. Select one of the following:

\_\_\_\_\_ *Appraiser inspection.* Escrow Agent shall assign the inspection to an appraiser of its choice duly licensed as such the State of Iowa. If the appraiser approves of all the work to be performed hereunder, the Escrow Agent shall release the balance of the funds held in escrow, if any, to the Responsible Party. The appraiser's decision as to the satisfactory completion of the work will be final.

**OR**

\_\_\_\_\_ *Buyer inspection.* Buyers will inspect the work performed. If the Buyers approve of all the work performed hereunder, the Escrow Agent shall release the balance of the funds held in escrow, if any, to the Responsible Party. The Buyer's decision as to the satisfactory completion of the work will be final.

The Responsible Party will provide satisfactory evidence to assure that no mechanic's liens are outstanding or can attach on account of the work. Should the Responsible Party wish, the Escrow Agent will pay directly to a contractor the sum required to reimburse said contractor for the work done to the property.

6. **Escrow agent liability.** The Responsible Party and the Buyer agree to hold the Escrow Agent and its agent harmless from any liability with respect to performance of its duties as escrow agent, the Escrow Agent's decision with respect to any release of the escrow funds, and the employment of any third party.

7. **Lien on funds.** Escrow Agent shall have a prior lien on the funds deposited herewith for any costs, including inspections, fees, court costs, and reasonable attorney fees, which it may incur during the course of administration of this agreement, or as a consequence of becoming a party to any legal or equitable proceeding which is brought by any third party claiming an interest in the escrowed funds or by any party which disputes the manner of the disposition of the funds.

8. **Contract with the Buyer to do the work.** If the Responsible Party is a Seller or a Builder, and agrees to contract with the buyer to do the work, an agreement must be signed at closing between the Seller or Builder and the Buyer which must contain a specific amount which the Buyer is to receive for completing the work. The Escrow Agent must be provided a copy of any such agreement.

Dated \_\_\_\_\_, 20\_\_\_\_.

**Buyers**

\_\_\_\_\_  
Print name: \_\_\_\_\_ Print name: \_\_\_\_\_

**Seller -** \_\_\_\_\_

by \_\_\_\_\_  
Print name: \_\_\_\_\_  
Print office: \_\_\_\_\_

**Escrow Agent -** \_\_\_\_\_

By \_\_\_\_\_  
Print name: \_\_\_\_\_  
Print office: \_\_\_\_\_

Exhibit 28

By: Attorney's Name, Att'y at Law, Attorney's address and phone number
Return Document To: <>

**Power of Attorney**  
**of**  
<>

**KNOW ALL PERSONS BY THIS INSTRUMENT** that the undersigned <>, of \_\_\_\_\_ County, Iowa does hereby make, constitute and appoint <>, of Story County, Iowa, his<> true and lawful Agent, with full right, power and authority for him<>, and in his<> name, place and stead to execute all documents, including a promissory note and mortgage, in order to BORROW MONEY or MORTGAGE PROPERTY or to complete, extend, modify or renew any obligations, giving either security (including but not restricted to real estate mortgages, stock certificates and insurance policies as collateral) or unsecured, negotiable or non-negotiable obligations of the undersigned, at a rate of interest and upon terms satisfactory to the Agent, with regards to the real estate described as follows:

*<legal description>*

(locally known as \_\_\_\_\_)

The undersigned further gives unto said Agent the full power and authority to do and perform each and every act, deed, matter, and thing whatsoever required and necessary to be done in and about the foregoing, as fully as the undersigned might or could do if personally present and acting.

The undersigned further directs that this Power of Attorney shall take effect immediately and shall be irrevocable unless and until such time as there is filed of record a duly acknowledged revocation of this instrument in the office of the Story County Recorder or, if this instrument is filed in another office, in the same office.

Each of the undersigned hereby authorizes the Agent to relinquish all rights of dower, homestead and distributive share in the event this instrument authorizes the conveyance of real estate.

Print name: \_\_\_\_\_

\_\_\_\_\_ Date

State of Iowa, (< County) SS.

Subscribed and sworn or affirmed before me by (<), this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Print name here: \_\_\_\_\_

Notary Public in and for said State and County



## IOWA CODE § 428A.2. EXCEPTIONS

The tax imposed by this chapter shall not apply to:

1. Any executory contract for the sale of land under which the vendee is entitled to or does take possession thereof, or any assignment or cancellation thereof.
2. Any instrument of mortgage, assignment, extension, partial release, or satisfaction thereof.
3. Any will.
4. Any plat.
5. Any lease.
6. Any deed, instrument, or writing in which the United States or any agency or instrumentality thereof or the state of Iowa or any agency, instrumentality, or governmental or political subdivision thereof is the grantor, assignor, transferor, or conveyor; and any deed, instrument or writing in which any of such unit of government is the grantee or assignee where there is no consideration.
7. Deeds for cemetery lots.
8. Deeds which secure a debt or other obligation, except those included in the sale of real property.
9. Deeds for the release of a security interest in property excepting those pertaining to the sale of real estate.
10. Deeds which, without additional consideration, confirm, correct, modify, or supplement a deed previously recorded.
11. Deeds between husband and wife, or parent and child, without actual consideration. A cancellation of indebtedness alone which is secured by the property being transferred and which is not greater than the fair market value of the property being transferred is not actual consideration within the meaning of this subsection.
12. Tax deeds.
13. Deeds of partition where the interest conveyed is without consideration. However, if any of the parties take shares greater in value than their undivided interest a tax is due on the greater values, computed at the rate set out in [section 428A.1](#).
14. The making or delivering of instruments of transfer resulting from a corporate merger, consolidation, or reorganization or a merger, consolidation, or reorganization of a limited liability company under the laws of the United States or any state thereof, where such instrument states such fact on the face thereof.
15. Deeds between a family corporation, partnership, limited partnership, limited liability partnership, or limited liability company and its stockholders, partners, or members for the purpose of transferring real property in an incorporation or corporate dissolution or the organization or dissolution of a partnership, limited partnership, limited liability partnership, or limited liability company under the laws of this state, where the deeds are given for no actual consideration other than for shares or for debt securities of the

corporation, partnership, limited partnership, limited liability partnership, or limited liability company. For purposes of this subsection, a family corporation, partnership, limited partnership, limited liability partnership, or limited liability company is a corporation, partnership, limited partnership, limited liability partnership, or limited liability company where the majority of the voting stock of the corporation, or of the ownership shares of the partnership, limited partnership, limited liability partnership, or limited liability company is held by and the majority of the stockholders, partners, or members are persons related to each other as spouse, parent, grandparent, lineal ascendants of grandparents or their spouses and other lineal descendants of the grandparents or their spouses, or persons acting in a fiduciary capacity for persons so related and where all of its stockholders, partners, or members are natural persons or persons acting in a fiduciary capacity for the benefit of natural persons.

16. Deeds for the transfer of property or the transfer of an interest in property when the deed is executed between former spouses pursuant to a decree of dissolution of marriage.

17. Deeds transferring easements.

18. Deeds giving back real property to lienholders in lieu of forfeitures or foreclosures.

19. Deeds executed by public officials in the performance of their official duties.

20. Deeds transferring distributions of assets to heirs at law or devisees under a will.

21. Deeds in which the consideration is five hundred dollars or less.

Exhibit 30

**Letter of Instruction to Close an Open-End Line of Credit Loan**

Date: \_\_\_\_\_

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

RE: Line of Credit  
Loan No: \_\_\_\_\_  
Borrower(s): \_\_\_\_\_  
Property Address: \_\_\_\_\_  
\_\_\_\_\_

Dear Sir or Madam,

I am writing you to instruct you to close the above-referenced line of credit. As a result of paying off the loan in full and providing you this instruction, we expect that the mortgage will be released within thirty days as required by the Iowa Code. Please call me immediately if there is a problem.

Thank you for your assistance with this matter.

Sincerely,

\_\_\_\_\_

Phone No. \_\_\_\_\_

Exhibit 31

**Sample organizational list of a closing package**

Closing Disclosure  
Signature addendum  
Note  
Mortgage  
Temporary payment coupon / first payment letter  
Initial escrow disclosure statement  
Itemization of amount financed  
Notice of right to cancel (refinance only)

*Other documents*

Loan application (Form 1003)  
Composite mortgage affidavit  
Title Guaranty attendance form

For borrowers' copies

Copy of title opinion  
Title Guaranty owners' policy brochure  
Business card  
Homestead tax credit reminder

Exhibit 32

**Closing Attendance Record**

Date: \_\_\_\_\_ Time: \_\_\_\_\_

Location: \_\_\_\_\_

Attorney verified identification: \_\_\_\_\_ (initial)

Name \_\_\_\_\_  
Phone \_\_\_\_\_  
 Attorney  
 Lender  
 Borrower  
 Realtor  
 Other (\_\_\_\_\_)

Name \_\_\_\_\_  
Phone \_\_\_\_\_  
 Attorney  
 Lender  
 Borrower  
 Realtor  
 Other (\_\_\_\_\_)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

Name \_\_\_\_\_  
Phone \_\_\_\_\_  
 Attorney  
 Lender  
 Borrower  
 Realtor  
 Other (\_\_\_\_\_)

Name \_\_\_\_\_  
Phone \_\_\_\_\_  
 Attorney  
 Lender  
 Borrower  
 Realtor  
 Other (\_\_\_\_\_)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

Name \_\_\_\_\_  
Phone \_\_\_\_\_  
 Attorney  
 Lender  
 Borrower  
 Realtor  
 Other (\_\_\_\_\_)

Name \_\_\_\_\_  
Phone \_\_\_\_\_  
 Attorney  
 Lender  
 Borrower  
 Realtor  
 Other (\_\_\_\_\_)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

Exhibit 33

\_\_\_\_\_ **County Homestead and Military Tax Credit**

Under the Code of Iowa, homeowners are allowed to file for exemptions from and credits toward their yearly property tax bill. To qualify for an exemption, applications must use their primary residence address for filing the qualifying credits.

If you are a veteran of the United States Armed Services, you may also qualify for an additional tax credit on your property taxes.

You can access the required forms at: \_\_\_\_\_.

*Additional county-specific instructions about the procedure for filing.*

You are also able to sign up for these credits in person at the following address:

\_\_\_\_\_ County Assessor Office

\_\_\_\_\_

Phone: \_\_\_\_\_

It is the responsibility of each owner to file a homestead tax credit with the county assessor on or before **July 1<sup>st</sup>** of the year the owner is first claiming the credit. You should wait approximately **ten days** prior to signing up for this credit to allow for the recordation of the deed.

This credit will remain on the property until you sell the property or no longer use it as your primary residence.

Exhibit 34

**Filing Instructions**

Date of filing: \_\_\_\_\_

Abstractor: \_\_\_\_\_

Borrower: \_\_\_\_\_

**Enclosed please find the following for your attention:**

- Warranty deed, DOV, and GHS
- Mortgage
- Assignment of mortgage
- Second mortgage
- March / Sept. taxes \$ \_\_\_\_\_
- Recording fees of \$ \_\_\_\_\_
- Revenue stamps of \$ \_\_\_\_\_
- \_\_\_\_\_

**Please do the following:**

- Run final search on all parties.
- Record documents.
- Call to confirm that filing has been completed.
- Issue a post-closing search certification upon filing the deed, mortgage (and other documents), instead of completing a final continuation.

We will be issuing a Rapid Certificate Final Title Policy following the closing; thus, we request that you do not need to wait for the filed releases of the prior mortgage(s) before you complete and return the post-closing certification to our office.

If any of these documents are not attached, or if you have any questions, please contact us immediately.

Exhibit 35

**1099 Worksheet**

\_\_\_\_\_ to \_\_\_\_\_

Closing Date: \_\_\_\_\_

Address of Property Sold: \_\_\_\_\_  
\_\_\_\_\_

Purchase Price: \$ \_\_\_\_\_

Sellers' Name: \_\_\_\_\_

Forwarding Address: \_\_\_\_\_  
\_\_\_\_\_

One of Seller's SSN: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

Buyers' Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

One of Buyer's SSN: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_



**Handout for Introduction to Iowa Residential Real Estate  
Transactions**  
Nuts & Bolts

Timothy L. Gartin  
Hastings, Gartin & Boettger, LLP  
409 Duff Ave.  
Ames, IA 50010  
O: 515.232.2501 / F: 515.232.2525  
[timothy.gartin@amesattorneys.com](mailto:timothy.gartin@amesattorneys.com)



### RESIDENTIAL PURCHASE AGREEMENT

TO \_\_\_\_\_ (SELLERS)

The undersigned BUYERS hereby offer to buy and the undersigned SELLERS by their acceptance agree to sell the real property situated in \_\_\_\_\_, Iowa, locally known as \_\_\_\_\_ and legally described as:

together with any easements and appurtenant servient estates, but subject to any reasonable encumbrances of record for public utilities or roads, any zoning restrictions, customary restrictive covenants and mineral reservations of record, if any, herein referred to as the "Property", upon the following terms and conditions provided BUYERS, on possession, are permitted to use the Property for residential purposes:

1. PURCHASE PRICE. The Purchase Price shall be \$ \_\_\_\_\_ and the method of payment shall be as follows:

\$ \_\_\_\_\_ with this offer to be deposited upon acceptance of this offer and held in trust by \_\_\_\_\_ as earnest money to be delivered to the SELLERS upon performance of SELLERS' obligations and satisfaction of BUYERS' contingencies, if any; and the balance of the Purchase Price:

- (a) in cash at the time of closing with adjustment for closing costs to be added or deducted from this amount. This Agreement is not contingent upon BUYERS obtaining such funds.
- (b) upon the terms specified in alternative \_\_\_\_\_ of the Financing Addendum to Residential Purchase Agreement as initialed and attached hereto and incorporated herein.

2. REAL ESTATE TAXES. A. SELLERS shall pay all real estate taxes that are due and payable as of the date of possession and constitute a lien against the Property, including any unpaid real estate taxes for any prior years.

B. SELLERS shall pay their prorated share, based upon the date of possession, of the real estate taxes for the fiscal year in which possession is given (ending June 30, \_\_\_\_\_) due and payable in the subsequent fiscal year (commencing July 1, \_\_\_\_\_).

BUYERS shall be given a credit for such proration at closing (unless this agreement is for an installment contract) based upon the last known actual net real estate taxes payable according to public record. However, if such taxes are based upon a partial assessment of the present property improvements or a changed tax classification as of the date of possession, such proration shall be based on the current millage rate, the assessed value, legislative tax rollbacks and real estate tax exemptions that will actually be applicable as shown by the Assessor's Records on the date of possession.

C. BUYERS shall pay all subsequent real estate taxes.

3. SPECIAL ASSESSMENTS. A. SELLERS shall pay in full all special assessments which are a lien on the Property as of the date of acceptance \_\_\_\_\_.

B. If "A" is stricken, then SELLERS shall pay all installments of special assessments which are a lien on the Property and, if not paid, would become delinquent during the calendar year this offer is accepted, and all prior installments thereof.

C. All charges for solid waste removal, sewage and maintenance that are attributable to SELLERS' possession, including those for which assessments arise after closing, shall be paid by SELLERS.

D. Any preliminary or deficiency assessment which cannot be discharged by payment shall be paid by SELLERS through an escrow account with sufficient funds to pay such liens when payable, with any unused funds returned to SELLERS.

E. BUYERS shall pay all other special assessments.

4. RISK OF LOSS AND INSURANCE. SELLERS shall bear the risk of loss or damage to the Property prior to closing or possession, whichever first occurs. SELLERS agree to maintain existing insurance and BUYERS may purchase additional insurance. In the event of substantial damage or destruction prior to closing, this Agreement shall be null and void; provided, however, BUYERS shall have the option to complete the closing and receive insurance proceeds regardless of the extent of damages. The property shall be deemed substantially damaged or destroyed if it cannot be restored to its present condition on or before the closing date.

5. POSSESSION AND CLOSING. If BUYERS timely perform all obligations, possession of the Property shall be delivered to BUYERS on \_\_\_\_\_, \_\_\_\_\_, and any adjustments of rent, insurance, taxes, interest and all charges attributable to the SELLERS' possession shall be made as of the date of possession. Closing shall occur after approval of title by buyers' attorney and vacation of the Property by SELLERS, but prior to possession by BUYERS. SELLERS agree to permit BUYERS to inspect the Property within \_\_\_\_\_ hours prior to closing to assure that the premises are in the condition required by this Agreement. If possession is given on a day other than closing, the parties shall make a separate agreement with adjustments as of the date of possession. This transaction shall be considered closed (upon the filing of title transfer documents) (upon the delivery of the title transfer documents to BUYERS) and receipt of all funds then due at closing from BUYERS under the Agreement.

6. FIXTURES. Included with the Property shall be all fixtures that integrally belong to, are specifically adapted to or are a part of the real estate, whether attached or detached, such as: attached wall-to-wall carpeting, built-in appliances, light fixtures (including light

bulbs), water softeners (except rentals), shutters, shades, rods, blinds, Venetian blinds, awnings, storm windows, storm doors, screens, television antennas (including satellite dishes), air conditioning equipment (except window type), door chimes, automatic garage door openers, electrical service cables, attached mirrors, fencing, gates, attached shelving, bushes, trees, shrubs and plants. Also included shall be the following:

The following items shall not be included:

**7. CONDITION OF PROPERTY.** A. The property as of the date of this Agreement including buildings, grounds, and all improvements will be preserved by the SELLERS in its present condition until possession, ordinary wear and tear excepted.

B. Within \_\_\_\_\_ days after the acceptance of this Agreement BUYERS may, at their sole expense, have the property inspected by a person or persons of their choice to determine if there are any structural, mechanical, plumbing, electrical, environmental, or other deficiencies. Within this same period, the BUYERS may notify in writing the SELLERS of any deficiency. The SELLERS shall immediately notify the BUYERS in writing of what steps, if any, the SELLERS will take to correct any deficiencies before closing. The BUYERS shall then immediately in writing notify the SELLERS that (1) such steps are acceptable, in which case this Agreement, as so modified, shall be binding upon all parties; or (2) that such steps are not acceptable, in which case this Agreement shall be null and void, and any earnest money shall be returned to BUYERS.

C. If "B" is deleted, BUYERS acknowledge that they have made a satisfactory inspection of the Property and are purchasing the Property in its existing condition.

D. **NEW CONSTRUCTION:** If the improvements on the subject property are under construction or are to be constructed, this Agreement shall be subject to approval of plans and specifications by the parties within \_\_\_\_\_ days of acceptance of this Agreement. New construction shall have the warranties implied by law, those specifically made by suppliers of materials/appliances, and those specifically tendered by the contractor.

**8. ABSTRACT AND TITLE.** SELLERS, at their expense, shall promptly obtain an abstract of title to the Property continued through the date of acceptance of this Agreement, \_\_\_\_\_ and deliver it to BUYERS' attorney for examination. It shall show merchantable title in SELLERS in conformity with this Agreement, Iowa law, and Title Standards of the Iowa State Bar Association. The SELLERS shall make every reasonable effort to promptly perfect title. If closing is delayed due to SELLERS' inability to provide marketable title, this Agreement shall continue in force and effect until either party rescinds the Agreement after giving ten days written notice to the other party. The abstract shall become the property of BUYERS when the purchase price is paid in full. SELLERS shall pay the costs of any additional abstracting and title work due to any act or omission of SELLERS, including transfers by or the death of SELLERS or their assignees.

**9. SURVEY.** BUYERS may, at BUYERS' expense prior to closing, have the property surveyed and certified by a Registered Land Surveyor. If the survey shows any encroachment on the Property or if any improvements located on the Property encroach on lands of others, the encroachments shall be treated as a title defect. If the survey is required under Chapter 354, SELLERS shall pay the cost thereof.

**10. ENVIRONMENTAL MATTERS.** (a) SELLERS warrant to the best of their knowledge and belief that there are no abandoned wells, solid waste disposal sites, hazardous wastes or substances, or underground storage tanks located on the Property, the Property does not contain levels of radon gas, asbestos or urea-formaldehyde foam insulation which require remediation under current governmental standards, and SELLERS have done nothing to contaminate the Property with hazardous wastes or substances. SELLERS warrant that the Property is not subject to any local, state, or federal judicial or administrative action, investigation or order, as the case may be, regarding wells, solid waste disposal sites, hazardous wastes or substances, or underground storage tanks. SELLERS shall also provide BUYERS with a properly executed GROUNDWATER HAZARD STATEMENT showing no wells, solid waste disposal sites, hazardous waste and underground storage tanks on the Property unless disclosed here:

(b) BUYERS may at their expense, within \_\_\_\_\_ days after the date of acceptance, obtain a report from a qualified engineer or other person qualified to analyze the existence or nature of any hazardous materials, substances, conditions or wastes located on the Property. In the event any hazardous materials, substances, conditions or wastes are discovered on the Property, BUYERS' obligation hereunder shall be contingent upon the removal of such materials, substances, conditions or wastes or other resolution of the matter reasonably satisfactory to BUYERS. However, in the event SELLERS are required to expend any sum in excess of \$ \_\_\_\_\_ to remove any hazardous materials, substances, conditions or wastes, SELLERS shall have the option to cancel this transaction and refund to BUYER all Earnest Money paid and declare this Agreement null and void. The expense of any inspection shall be paid by BUYERS. The expense of any action necessary to remove or otherwise make safe any hazardous material, substance, conditions or waste shall be paid by SELLERS, subject to SELLERS' right to cancel this transaction as provided above.

**11. DEED.** Upon payment of the purchase price, SELLERS shall convey the Property to BUYERS by \_\_\_\_\_ deed, free and clear of all liens, restrictions, and encumbrances except as provided in this Agreement. General warranties of title shall extend to the time of delivery of the deed excepting liens or encumbrances suffered or permitted by BUYERS.

**12. JOINT TENANCY IN PROCEEDS AND IN REAL ESTATE.** If SELLERS, immediately preceding acceptance of the offer, hold title to the Property in joint tenancy with full right of survivorship, and the joint tenancy is not later destroyed by operation of law or by acts of the SELLERS, then the proceeds of this sale, and any continuing or recaptured rights of SELLERS in the Property, shall belong to SELLERS as joint tenants with full rights of survivorship and not as tenants in common; and BUYERS in the event of the death of any SELLER, agree to pay any balance of the price due SELLERS under this contract to the surviving SELLERS and to accept a deed from the surviving SELLERS consistent with Paragraph 15.

**13. JOINDER BY SELLER'S SPOUSE.** SELLER'S spouse, if no: a title holder immediately preceding acceptance, executes this agreement only for the purpose of relinquishing all rights of dower, homestead and distributive share or in compliance with Section 561.13 of the Code of Iowa and agrees to execute the deed or real estate contract for this purpose.

**14. STATEMENT AS TO LIENS.** If BUYERS intend to assume or take subject to a lien on the Property, SELLERS shall furnish BUYERS with a written statement prior to closing from the holder of such lien, showing the correct balance due.

**15. USE OF PURCHASE PRICE.** At time of settlement, funds of the purchase price may be used to pay taxes and other liens and to acquire outstanding interests, if any, of others.

**16. APPROVAL OF COURT.** If the Property is an asset of an estate, trust or conservatorship, this Agreement is contingent upon Court approval unless declared unnecessary by BUYERS' attorney. If the sale of the Property is subject to court approval, the fiduciary shall promptly submit this Agreement for such approval. If this Agreement is not so approved by \_\_\_\_\_, either party may declare this Agreement null and void, and all payments made hereunder shall be returned to BUYERS.

17. REMEDIES OF THE PARTIES. A. If BUYERS fail to timely perform this Agreement, SELLERS may forfeit it as provided in the Iowa Code (Chapter 656), and all payments made shall be forfeited; or, at SELLERS' option, upon thirty days written notice of intention to accelerate the payment of the entire balance because of BUYERS' default (during which thirty days the default is not corrected), SELLERS may declare the entire balance immediately due and payable. Thereafter this agreement may be foreclosed in equity and the Court may appoint a receiver.

B. If SELLERS fail to timely perform this Agreement, BUYERS have the right to have all payments made returned to them.

C. BUYERS and SELLERS are also entitled to utilize any and all other remedies or actions at law or in equity available to them and shall be entitled to obtain judgment for costs and attorney fees as permitted by law.

18. NOTICE. Any notice under this Agreement shall be in writing and be deemed served when it is delivered by personal delivery or by certified mail return receipt requested, addressed to the parties at the address given below.

19. GENERAL PROVISIONS. In the performance of each part of this Agreement, time shall be of the essence. Failure to promptly assert rights herein shall not, however, be a waiver of such rights or a waiver of any existing or subsequent default. This Agreement shall apply to and bind the successors in interest of the parties. This Agreement shall survive the closing. Paragraph headings are for convenience of reference and shall not limit or affect the meaning of this Agreement. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender according to the context.

20. ADDITIONAL PROVISIONS: (check if applicable)

A. **SALE OF BUYERS' PROPERTY.** This Agreement is contingent upon the sale and settlement of the BUYERS' property locally known as \_\_\_\_\_ on or before \_\_\_\_\_. If settlement has not been made by this date, the SELLERS may rescind this Agreement by giving notice to BUYERS that unless sale and settlement of BUYERS' property is made within five (5) business days of such notice, then this Agreement shall be null and void. Unless SELLERS give such written notice, this Agreement shall remain valid until the sale of BUYERS' property.

SELLERS reserve the right to continue to offer the Property for sale. Should SELLERS receive another offer which they desire to accept, BUYERS shall have \_\_\_\_\_ (\_\_\_\_\_) days from the delivery of written notice to waive the "contingency of sale" Notice from the BUYERS to the SELLERS, removing the contingency of sale, shall be timely delivered to the SELLERS along with reasonable assurance that BUYERS can complete the purchase with the sale of the property referenced above.

If BUYERS do timely remove such contingency, this Agreement will remain in full force and effect (but without being contingent on the sale of BUYERS' property). If BUYERS do not timely remove such contingency, SELLERS will immediately return to BUYERS all earnest money paid, this Agreement will be of no further force and effect, and neither party will have any further obligation to the other hereunder.

B. **TERMITE INSPECTION.** \_\_\_\_\_ at their expense shall have the Property inspected for termites or other wood destroying insects by a licensed pest inspector prior to closing. If active infestation or damage due to prior infestation is discovered, SELLERS shall have the option of either having the Property treated for infestation by a licensed pest exterminator and having any damage repaired to the BUYERS' satisfaction or, declaring this Agreement null and void and returning all earnest money to BUYERS. This provision shall not apply to fences, trees, shrubs or outbuildings other than garages. BUYERS may accept the property in its existing condition without such treatment or repairs.

C. **WELL TEST.** SELLERS, at SELLERS' expense, shall provide BUYERS, within \_\_\_\_\_ days after acceptance of this offer, a report issued by the county health department, or a qualified testing service, indicating the location of any well on the Property and that water from each well (1) is safe for its intended use and (2) is in sufficient quantity for its intended use. If BUYERS receive an unsatisfactory report, the basis for which cannot be resolved between BUYERS and SELLERS within \_\_\_\_\_ days of receipt thereof, then upon written notice from BUYERS to SELLERS, this agreement shall be null and void and all earnest money paid shall be returned immediately to BUYERS.

D. **SEPTIC SYSTEM TEST.** SELLERS, at SELLERS' expense, shall provide BUYERS within \_\_\_\_\_ days after acceptance of this offer a report issued by the county health department, or a qualified testing service, indicating that the septic/sanitary disposal system is operating satisfactorily, is not disapproved, is of sufficient capacity to serve the Property and that continued use of the system is permitted. If BUYERS receive an unsatisfactory report, the basis of which cannot be resolved between BUYERS and SELLERS within \_\_\_\_\_ days of receipt thereof, then upon written notice from BUYERS to SELLERS, this agreement shall be null and void and all earnest money paid hereunder shall be returned immediately to BUYERS.

E. **NO REAL ESTATE AGENT OR BROKER.** Neither party has used the services of a real estate agent or broker in connection with this transaction. SELLERS agree to indemnify BUYERS and hold BUYERS harmless from any claim by any real estate agent or broker arising out of or related to this transaction between SELLERS and BUYERS.

F. **OTHER:** Attach Addendum.

21. ACCEPTANCE. When accepted, this Agreement shall become a binding contract. If not accepted and delivered to BUYERS on or before the \_\_\_\_\_ day of \_\_\_\_\_, this Agreement shall be null and void and all payments made shall be returned immediately to BUYERS.

Accepted \_\_\_\_\_

Dated \_\_\_\_\_

SELLERS  
SS# \_\_\_\_\_

BUYERS  
SS# \_\_\_\_\_

SELLERS  
SS# \_\_\_\_\_

BUYERS  
SS# \_\_\_\_\_

Address \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_

Telephone \_\_\_\_\_

FINANCING ADDENDUM  
TO  
RESIDENTIAL PURCHASE AGREEMENT

INITIAL IF APPLICABLE:                      A. NEW MORTGAGE: This Agreement is contingent upon the BUYERS obtaining a commitment in writing for a mortgage for not more than                      % of the purchase price with note interest at                      % or less with a term of no less than                      years. BUYERS agree to pay all customary loan costs. The SELLERS agree to pay a discount and/or origination fee, if required, of                      %, or less, of the new mortgage obtained by the BUYERS. BUYERS agree upon acceptance of this offer to immediately make application for such mortgage with a lender and to make their best effort to obtain a mortgage commitment as above provided.

                     BUYERS  
                     SELLERS  
If BUYERS have not obtained a written commitment or loan denial on or before                     , then SELLERS may rescind this Agreement by giving written notice to the BUYERS that if a mortgage commitment has not been obtained within 5 business days of receipt of such notice then this Agreement shall be null and void. If SELLERS do not choose to give such written notice, then this Agreement shall remain valid until the BUYERS have obtained a mortgage commitment or a denial.

In addition to the proceeds of the aforementioned mortgage, the BUYERS shall pay the balance of the purchase price in cash at the time of closing with adjustment for closing costs to be added or deducted from this amount.

                     BUYERS  
                     SELLERS  
B. ASSUMPTION OF MORTGAGE OR CONTRACT: The BUYERS shall pay a portion of the purchase price by assuming and agreeing to pay the mortgage or contract currently on this property with an approximate balance of \$                      with principal and interest payments of approximately \$                      with current interest of                      %. SELLERS shall pay interest to the date of possession. If consent of the holder of such mortgage or contract is required then this Agreement is contingent upon such consent. The BUYERS agree in good faith to make their best effort to promptly obtain such consent and to pay all expenses and assumption fees related thereto. If BUYERS have not procured such consent on or before                     , then SELLERS may rescind this Agreement by giving written notice to the BUYERS stating that if such consent is not obtained within 5 working days of the receipt of such notice, then this Agreement shall be null and void. All payments due prior to and including the date of closing are to be paid by the SELLERS.

The balance of the purchase price shall be paid in cash at the time of closing with adjustment for closing costs to be added or deducted from this amount. If the SELLERS have an escrow account in relation to such mortgage or contract, such account shall be brought current and BUYERS shall (check one)

- Purchase such escrow account and the balance of SELLERS' tax obligation under paragraphs 2 and 3, if any, shall be credited to BUYERS at the time of closing.
- Assume said escrow account in lieu of SELLERS' tax obligations and tax proration, in which event Paragraphs 2 and 3 herein shall not apply.

This Agreement (is) (is not) contingent upon SELLERS' release from liability on the mortgage/contract being assumed.

The mortgage/contract being assumed (does) (does not) provide for a variable interest rate.

The mortgage/contract being assumed (does) (does not) contain a balloon payment. Date of balloon, if any:                     

                     BUYERS  
                     SELLERS  
C. CONTRACT: BUYERS and SELLERS will execute a real estate installment contract with a balance due in the amount of \$                      on the form of The Iowa State Bar Association in which BUYERS agree to pay monthly payments of \$                     , including principal and interest at the rate of                      %, until the unpaid principal balance, together with accrued interest, is paid in full, or until the amount due is reduced to the amount of the mortgage now or hereinafter placed on the property by SELLERS, at which time SELLERS shall deliver to BUYERS a warranty deed. Interest shall commence on the date of possession and the first monthly payment shall be 30 days after the date of possession unless otherwise mutually agreed by the parties. The balance of the purchase price is to be paid in cash at the time of closing, with SELLERS adjustment for closing costs to be added or deducted from this amount. If SELLERS now have or hereafter place a mortgage(s) on the property, such mortgage(s) may not exceed the real estate contract balance, and the interest rate and amortization thereof shall be no more onerous than the interest rate and amortization on the real estate contract. This Agreement is contingent upon the SELLERS' lender's approval, if required.

This contract (shall) (shall not) have a balloon payment. Date of balloon, if any:                     

This contract (shall) (shall not) allow BUYERS to prepay all or any part of the principal without penalty;

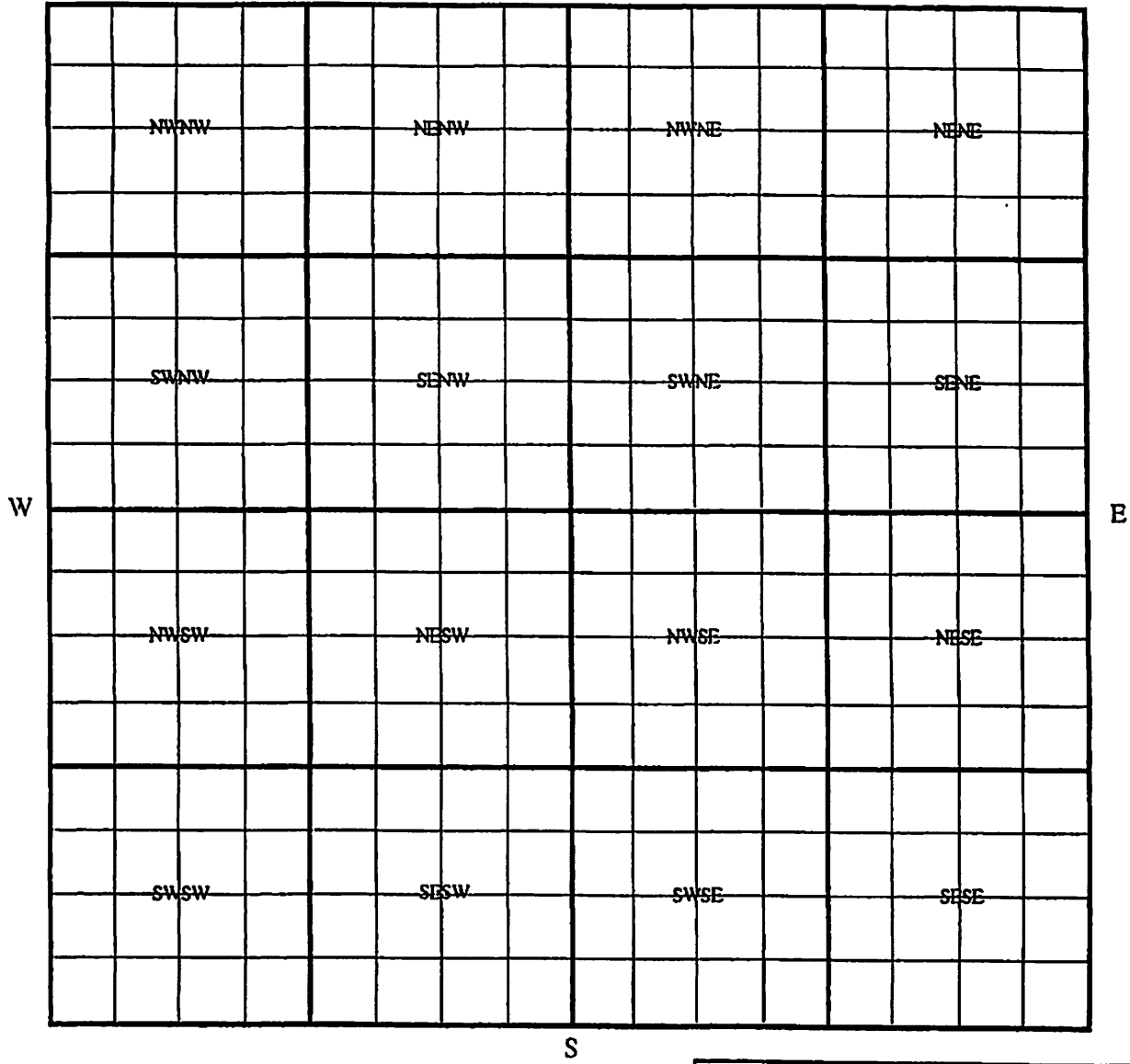
This contract (shall) (shall not) be due and payable in full upon sale or assignment by the BUYERS;

This contract (shall) (shall not) require 1/12 of the annual insurance premium and taxes be paid to SELLERS with the monthly payments into an escrow fund established by SELLERS. SELLERS shall use these funds to pay real estate taxes and insurance prior to their delinquency. The parties shall review and make adjustments in the escrow account during the term of the real estate installment contract.

In the event that tax payments are not escrowed, Sellers shall pay all real estate tax installments, or portions thereof, for taxes that accrue prior to possession. BUYERS shall pay all real estate tax installments, or portions thereof, for taxes that accrue after the date of possession. The parties shall pay the installments for which they are responsible as they become due and prior to delinquency.

D. OTHER: Attach Addendum.

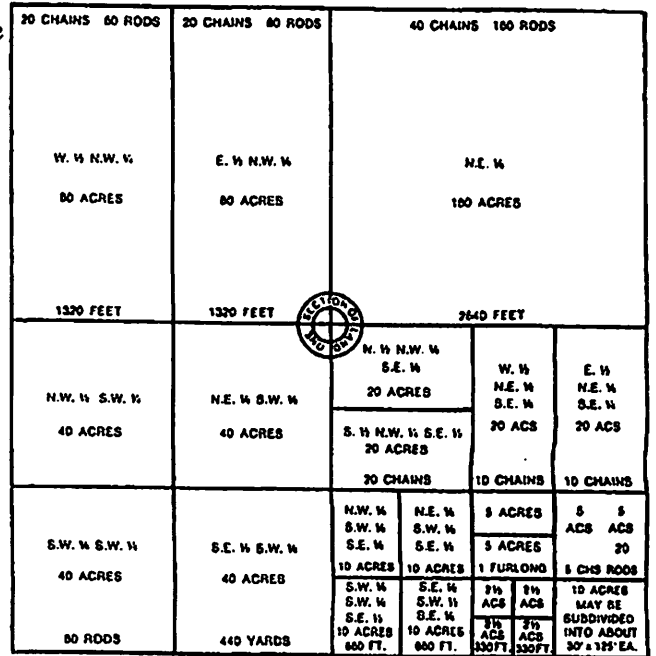
SECTION/QUARTER SECTION  
N



QUARTER SECTION: 1 cm. = 165' = 1 small box = .625 acre  
SECTION: 1 cm. = 330' = 1 small box = 2.5 acres

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

STANDARD	T6N	PARALL.					
PRINCIPAL MERIDIAN	T4N						
	T3N						
	T2N						
	T1N	LINE					
	T3S						
R3W	R2W	R1E	R1E	R2E	R3E	R4E	R5E
		PRINCIPAL MERIDIAN				GUIDE MERIDIAN	



LENDER (BORROWERS) - TO DATE

LEGAL DESCRIPTION.

INIT: ABTRACTOR FROM \_\_\_\_\_ TO \_\_\_\_\_ AT \_\_\_\_\_ AM

SUB: ABTRACTOR TO \_\_\_\_\_ AT \_\_\_\_\_ AM \_\_\_\_\_ ENTRIES.

⊛ # 40 PLAT (1955) - Dim.

T.O. - ATTY - TIRE IN MARTHA WASHINGTON

⊛ # 41 EASEMENT CITY OF \_\_\_\_\_ FILED \_\_\_\_\_ AS

INST. NO. \_\_\_\_\_ / BOOK \_\_\_\_\_, PAGE \_\_\_\_\_

UTILITY N 5'

# 52 WD (1970) THOMAS JEFFERSON

# 56 WD (1974) ABRAHAM AND MARY LINCOLN, H&W, JT

60 ⊛ # 57 MTB. 57/213 FIRST NAT'L BANK 6/1, 1/74

# 72 ⊛ # 58 MTB. 62/91 " " 2/9, 10/75

⊛ # 59 ASSIGN TO IOWA BANKERS MTB. CORP. 2/10/75 62/92

# 70 WD (2000) DWIGHT AND MAMIE EISENHOWER, H&W, JT

FILED 7/1/00 AS INT. NO. 00-07444

SEE #82 ⊛ # 71 MTB. 00-07445 WELLS FARGO BANK, N.A. 7/1, 1/00 \$100,000

⊛ # 75 DISS. OF MARRIAGE - DWIGHT EISENHOWER, PET. AND MAMIE

EISENHOWER, RESP. CASE NO. \_\_\_\_\_; DECREE DATED \_\_\_\_\_

CHILD SUPPORT

DWIGHT OWES \$450/mo BEG. 2/1/03 \$47,250

AMT. OWED THROUGH 10/1/09 = 105 mo. x \$450 = ~~\$5,400~~

AMT. PAID ~~\$5,400~~ \$47,250

↳ CURRENT.

RE. TO MAMIE; DWIGHT TO GIVE QC COSTS PAID

#76 QC (2004) DWIGHT EISENHOWER FROM MAMIE E., SINGLE  
- FILED 2/1/03 AS INST. NO. 03-00215

(2) \* #80 MTG. <sup>ID</sup> 00-12459 WELLS FARGO BANK, NA 8/1, 5/00/10  
\$92,000

#82 REL. OF MTG. AT #71 BY INST. FILED 10/15/10 10-19889  
- RELEASE IS GIVEN BY MERS. NO ASSIGNMENT  
TO MAKE REL. EFFECTIVE.

\*

REQ: ASSIGNMENT OR PROPER RELEASE

\* #90 RESTRICTIVE COVENANTS - NO AUTO RENEWAL.

- FILED 3/1/11 AS INST. NO. 11-09700

\* #91 ZONING AMES #3557 (RESIDENTIAL LOW DENSITY ZONE)

\* #93 TAXES (PARCEL NO. \_\_\_\_\_)

10-11, 11-12

1ST - \$ \_\_\_\_\_, PAID

2D - \$ \_\_\_\_\_, DUE, NOT DEL.

NO SPECIALS

\* #94 LIEN SEARCH

DWIGHT EISENHOWER

MAMIE "

ISSUES FOR T.O.

DEFECTIVE MTG. RELEASE

CHILD SUPP. - CURRENT - NOTHING REQD



# Closing Disclosure

This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.

## Closing Information

**Date Issued** 4/15/2013  
**Closing Date** 4/15/2013  
**Disbursement Date** 4/15/2013  
**Settlement Agent** Epsilon Title Co.  
**File #** 12-3456  
**Property** 456 Somewhere Ave  
 Anytown, ST 12345  
**Sale Price** \$180,000

## Transaction Information

**Borrower** Michael Jones and Mary Stone  
 123 Anywhere Street  
 Anytown, ST 12345  
**Seller** Steve Cole and Amy Doe  
 321 Somewhere Drive  
 Anytown, ST 12345  
**Lender** Ficus Bank

## Loan Information

**Loan Term** 30 years  
**Purpose** Purchase  
**Product** Fixed Rate  
**Loan Type**  Conventional  FHA  
 VA  \_\_\_\_\_  
**Loan ID #** 123456789  
**MIC #** 000654321

Loan Terms	Can this amount increase after closing?	
<b>Loan Amount</b>	\$162,000	<b>NO</b>
<b>Interest Rate</b>	3.875%	<b>NO</b>
<b>Monthly Principal &amp; Interest</b> <i>See Projected Payments below for your Estimated Total Monthly Payment</i>	\$761.78	<b>NO</b>
<b>Prepayment Penalty</b>	<b>Does the loan have these features?</b> <b>YES</b> • As high as \$3,240 if you pay off the loan during the first 2 years	
<b>Balloon Payment</b>	<b>NO</b>	

Projected Payments	Years 1-7	Years 8-30
<b>Payment Calculation</b>		
Principal & Interest	\$761.78	\$761.78
Mortgage Insurance	+ 82.35	+ —
Estimated Escrow <i>Amount can increase over time</i>	+ 206.13	+ 206.13
<b>Estimated Total Monthly Payment</b>	<b>\$1,050.26</b>	<b>\$967.91</b>
<b>Estimated Taxes, Insurance &amp; Assessments</b> <i>Amount can increase over time See page 4 for details</i>	\$356.13 a month	<b>This estimate includes</b> <input checked="" type="checkbox"/> Property Taxes <input checked="" type="checkbox"/> Homeowner's Insurance <input checked="" type="checkbox"/> Other: Homeowner's Association Dues <i>See Escrow Account on page 4 for details. You must pay for other property costs separately.</i>
		<b>In escrow?</b> <b>YES</b> <b>YES</b> <b>NO</b>

Costs at Closing	
<b>Closing Costs</b>	\$9,712.10 Includes \$4,694.05 in Loan Costs + \$5,018.05 in Other Costs – \$0 in Lender Credits. See page 2 for details.
<b>Cash to Close</b>	\$14,147.26 Includes Closing Costs. See Calculating Cash to Close on page 3 for details.

# Closing Cost Details

Loan Costs	Borrower-Paid		Seller-Paid		Paid by Others
	At Closing	Before Closing	At Closing	Before Closing	
<b>A. Origination Charges</b>	<b>\$1,802.00</b>				
01 0.25 % of Loan Amount (Points)	\$405.00				
02 Application Fee	\$300.00				
03 Underwriting Fee	\$1,097.00				
04					
05					
06					
07					
08					
<b>B. Services Borrower Did Not Shop For</b>	<b>\$236.55</b>				
01 Appraisal Fee to John Smith Appraisers Inc.					\$405.00
02 Credit Report Fee to Information Inc.		\$29.80			
03 Flood Determination Fee to Info Co.	\$20.00				
04 Flood Monitoring Fee to Info Co.	\$31.75				
05 Tax Monitoring Fee to Info Co.	\$75.00				
06 Tax Status Research Fee to Info Co.	\$80.00				
07					
08					
09					
10					
<b>C. Services Borrower Did Shop For</b>	<b>\$2,655.50</b>				
01 Pest Inspection Fee to Pests Co.	\$120.50				
02 Survey Fee to Surveys Co.	\$85.00				
03 Title – Insurance Binder to Epsilon Title Co.	\$650.00				
04 Title – Lender’s Title Insurance to Epsilon Title Co.	\$500.00				
05 Title – Settlement Agent Fee to Epsilon Title Co.	\$500.00				
06 Title – Title Search to Epsilon Title Co.	\$800.00				
07					
08					
<b>D. TOTAL LOAN COSTS (Borrower-Paid)</b>	<b>\$4,694.05</b>				
Loan Costs Subtotals (A + B + C)	\$4,664.25	\$29.80			
<b>Other Costs</b>					
<b>E. Taxes and Other Government Fees</b>	<b>\$85.00</b>				
01 Recording Fees Deed: \$40.00 Mortgage: \$45.00	\$85.00				
02 Transfer Tax to Any State			\$950.00		
<b>F. Prepays</b>	<b>\$2,120.80</b>				
01 Homeowner’s Insurance Premium ( 12 mo.) to Insurance Co.	\$1,209.96				
02 Mortgage Insurance Premium ( mo.)					
03 Prepaid Interest ( \$17.44 per day from 4/15/13 to 5/1/13 )	\$279.04				
04 Property Taxes ( 6 mo.) to Any County USA	\$631.80				
05					
<b>G. Initial Escrow Payment at Closing</b>	<b>\$412.25</b>				
01 Homeowner’s Insurance \$100.83 per month for 2 mo.	\$201.66				
02 Mortgage Insurance per month for mo.					
03 Property Taxes \$105.30 per month for 2 mo.	\$210.60				
04					
05					
06					
07					
08 Aggregate Adjustment	- 0.01				
<b>H. Other</b>	<b>\$2,400.00</b>				
01 HOA Capital Contribution to HOA Acre Inc.	\$500.00				
02 HOA Processing Fee to HOA Acre Inc.	\$150.00				
03 Home Inspection Fee to Engineers Inc.	\$750.00			\$750.00	
04 Home Warranty Fee to XYZ Warranty Inc.			\$450.00		
05 Real Estate Commission to Alpha Real Estate Broker			\$5,700.00		
06 Real Estate Commission to Omega Real Estate Broker			\$5,700.00		
07 Title – Owner’s Title Insurance (optional) to Epsilon Title Co.	\$1,000.00				
08					
<b>I. TOTAL OTHER COSTS (Borrower-Paid)</b>	<b>\$5,018.05</b>				
Other Costs Subtotals (E + F + G + H)	\$5,018.05				
<b>J. TOTAL CLOSING COSTS (Borrower-Paid)</b>	<b>\$9,712.10</b>				
Closing Costs Subtotals (D + I)	\$9,682.30	\$29.80	\$12,800.00	\$750.00	\$405.00
Lender Credits					

## Calculating Cash to Close

Use this table to see what has changed from your Loan Estimate.

	Loan Estimate	Final	Did this change?
Total Closing Costs (J)	\$8,054.00	\$9,712.10	<b>YES</b> • See <b>Total Loan Costs (D)</b> and <b>Total Other Costs (I)</b>
Closing Costs Paid Before Closing	\$0	– \$29.80	<b>YES</b> • You paid these Closing Costs <b>before closing</b>
Closing Costs Financed (Paid from your Loan Amount)	\$0	\$0	<b>NO</b>
Down Payment/Funds from Borrower	\$18,000.00	\$18,000.00	<b>NO</b>
Deposit	– \$10,000.00	– \$10,000.00	<b>NO</b>
Funds for Borrower	\$0	\$0	<b>NO</b>
Seller Credits	\$0	– \$2,500.00	<b>YES</b> • See Seller Credits in <b>Section L</b>
Adjustments and Other Credits	\$0	– \$1,035.04	<b>YES</b> • See details in <b>Sections K and L</b>
<b>Cash to Close</b>	\$16,054.00	\$14,147.26	

## Summaries of Transactions

Use this table to see a summary of your transaction.

### BORROWER'S TRANSACTION

#### K. Due from Borrower at Closing **\$189,762.30**

01 Sale Price of Property \$180,000.00

02 Sale Price of Any Personal Property Included in Sale

03 Closing Costs Paid at Closing (J) \$9,682.30

04

#### Adjustments

05

06

07

#### Adjustments for Items Paid by Seller in Advance

08 City/Town Taxes to

09 County Taxes to

10 Assessments to

11 HOA Dues 4/15/13 to 4/30/13 \$80.00

12

13

14

15

#### L. Paid Already by or on Behalf of Borrower at Closing **\$175,615.04**

01 Deposit \$10,000.00

02 Loan Amount \$162,000.00

03 Existing Loan(s) Assumed or Taken Subject to

04

05 Seller Credit \$2,500.00

#### Other Credits

06 Rebate from Epsilon Title Co. \$750.00

07

#### Adjustments

08

09

10

11

#### Adjustments for Items Unpaid by Seller

12 City/Town Taxes 1/1/13 to 4/14/13 \$365.04

13 County Taxes to

14 Assessments to

15

16

17

### CALCULATION

Total Due from Borrower at Closing (K) \$189,762.30

Total Paid Already by or on Behalf of Borrower at Closing (L) – \$175,615.04

**Cash to Close**  **From**  **To Borrower** **\$14,147.26**

### SELLER'S TRANSACTION

#### M. Due to Seller at Closing **\$180,080.00**

01 Sale Price of Property \$180,000.00

02 Sale Price of Any Personal Property Included in Sale

03

04

05

06

07

08

#### Adjustments for Items Paid by Seller in Advance

09 City/Town Taxes to

10 County Taxes to

11 Assessments to

12 HOA Dues 4/15/13 to 4/30/13 \$80.00

13

14

15

16

#### N. Due from Seller at Closing **\$115,665.04**

01 Excess Deposit

02 Closing Costs Paid at Closing (J) \$12,800.00

03 Existing Loan(s) Assumed or Taken Subject to

04 Payoff of First Mortgage Loan \$100,000.00

05 Payoff of Second Mortgage Loan

06

07

08 Seller Credit \$2,500.00

09

10

11

12

13

#### Adjustments for Items Unpaid by Seller

14 City/Town Taxes 1/1/13 to 4/14/13 \$365.04

15 County Taxes to

16 Assessments to

17

18

19

### CALCULATION

Total Due to Seller at Closing (M) \$180,080.00

Total Due from Seller at Closing (N) – \$115,665.04

**Cash**  **From**  **To Seller** **\$64,414.96**

# Additional Information About This Loan

## Loan Disclosures

### Assumption

- If you sell or transfer this property to another person, your lender
- will allow, under certain conditions, this person to assume this loan on the original terms.
  - will not allow assumption of this loan on the original terms.

### Demand Feature

Your loan

- has a demand feature, which permits your lender to require early repayment of the loan. You should review your note for details.
- does not have a demand feature.

### Late Payment

If your payment is more than 15 days late, your lender will charge a late fee of 5% of the monthly principal and interest payment.

### Negative Amortization (Increase in Loan Amount)

Under your loan terms, you

- are scheduled to make monthly payments that do not pay all of the interest due that month. As a result, your loan amount will increase (negatively amortize), and your loan amount will likely become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
- may have monthly payments that do not pay all of the interest due that month. If you do, your loan amount will increase (negatively amortize), and, as a result, your loan amount may become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
- do not have a negative amortization feature.

### Partial Payments

Your lender

- may accept payments that are less than the full amount due (partial payments) and apply them to your loan.
- may hold them in a separate account until you pay the rest of the payment, and then apply the full payment to your loan.
- does not accept any partial payments.

If this loan is sold, your new lender may have a different policy.

### Security Interest

You are granting a security interest in  
456 Somewhere Ave., Anytown, ST 12345

You may lose this property if you do not make your payments or satisfy other obligations for this loan.

### Escrow Account

For now, your loan

- will have an escrow account (also called an "impound" or "trust" account) to pay the property costs listed below. Without an escrow account, you would pay them directly, possibly in one or two large payments a year. Your lender may be liable for penalties and interest for failing to make a payment.

Escrow		
Escrowed Property Costs over Year 1	\$2,473.56	Estimated total amount over year 1 for your escrowed property costs: <i>Homeowner's Insurance</i> <i>Property Taxes</i>
Non-Escrowed Property Costs over Year 1	\$1,800.00	Estimated total amount over year 1 for your non-escrowed property costs: <i>Homeowner's Association Dues</i>  You may have other property costs.
Initial Escrow Payment	\$412.25	A cushion for the escrow account you pay at closing. See Section G on page 2.
Monthly Escrow Payment	\$206.13	The amount included in your total monthly payment.

- will not have an escrow account because  you declined it  your lender does not offer one. You must directly pay your property costs, such as taxes and homeowner's insurance. Contact your lender to ask if your loan can have an escrow account.

No Escrow		
Estimated Property Costs over Year 1		Estimated total amount over year 1. You must pay these costs directly, possibly in one or two large payments a year.
Escrow Waiver Fee		

### In the future,

Your property costs may change and, as a result, your escrow payment may change. You may be able to cancel your escrow account, but if you do, you must pay your property costs directly. If you fail to pay your property taxes, your state or local government may (1) impose fines and penalties or (2) place a tax lien on this property. If you fail to pay any of your property costs, your lender may (1) add the amounts to your loan balance, (2) add an escrow account to your loan, or (3) require you to pay for property insurance that the lender buys on your behalf, which likely would cost more and provide fewer benefits than what you could buy on your own.

## Loan Calculations

<b>Total of Payments.</b> Total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.	\$285,803.36
<b>Finance Charge.</b> The dollar amount the loan will cost you.	\$118,830.27
<b>Amount Financed.</b> The loan amount available after paying your upfront finance charge.	\$162,000.00
<b>Annual Percentage Rate (APR).</b> Your costs over the loan term expressed as a rate. This is not your interest rate.	4.174%
<b>Total Interest Percentage (TIP).</b> The total amount of interest that you will pay over the loan term as a percentage of your loan amount.	69.46%



**Questions?** If you have questions about the loan terms or costs on this form, use the contact information below. To get more information or make a complaint, contact the Consumer Financial Protection Bureau at [www.consumerfinance.gov/mortgage-closing](http://www.consumerfinance.gov/mortgage-closing)

## Other Disclosures

### Appraisal

If the property was appraised for your loan, your lender is required to give you a copy at no additional cost at least 3 days before closing. If you have not yet received it, please contact your lender at the information listed below.

### Contract Details

See your note and security instrument for information about

- what happens if you fail to make your payments,
- what is a default on the loan,
- situations in which your lender can require early repayment of the loan, and
- the rules for making payments before they are due.

### Liability after Foreclosure

If your lender forecloses on this property and the foreclosure does not cover the amount of unpaid balance on this loan,

- state law may protect you from liability for the unpaid balance. If you refinance or take on any additional debt on this property, you may lose this protection and have to pay any debt remaining even after foreclosure. You may want to consult a lawyer for more information.
- state law does not protect you from liability for the unpaid balance.

### Refinance

Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan.

### Tax Deductions

If you borrow more than this property is worth, the interest on the loan amount above this property's fair market value is not deductible from your federal income taxes. You should consult a tax advisor for more information.

## Contact Information

	Lender	Mortgage Broker	Real Estate Broker (B)	Real Estate Broker (S)	Settlement Agent
<b>Name</b>	Ficus Bank		Omega Real Estate Broker Inc.	Alpha Real Estate Broker Co.	Epsilon Title Co.
<b>Address</b>	4321 Random Blvd. Somecity, ST 12340		789 Local Lane Sometown, ST 12345	987 Suburb Ct. Someplace, ST 12340	123 Commerce Pl. Somecity, ST 12344
<b>NMLS ID</b>					
<b>ST License ID</b>			Z765416	Z61456	Z61616
<b>Contact</b>	Joe Smith		Samuel Green	Joseph Cain	Sarah Arnold
<b>Contact NMLS ID</b>	12345				
<b>Contact ST License ID</b>			P16415	P51461	PT1234
<b>Email</b>	joesmith@ ficusbank.com		sam@omegare.biz	joe@alphare.biz	sarah@ epsilontitle.com
<b>Phone</b>	123-456-7890		123-555-1717	321-555-7171	987-555-4321

## Confirm Receipt

By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form.

Applicant Signature

Date

Co-Applicant Signature

Date

A little grace  
Tim Gartin

Most of our attention in Title Guaranty seminars and newsletters is necessarily on the “technical” side of how to examine abstracts, consider various title objections, adapt to new case law or statutes, prepare settlement statements, close loans, and comply with ever-changing banking regulations. There’s a lot to keep up on. Today I take up a subject that does not receive much air time – grace. All of us like to receive grace from others, but sometimes it is good to be reminded of ways that we can creatively give grace to others. The following thoughts are offered for those who examine abstracts and close loans.

**For examining attorneys**

It may seem counter intuitive that an attorney sitting at his or her desk, perhaps late at night, examining an abstract would have any opportunity to provide grace to others. Here are two ways:

1. *Take pains to avoid embarrassing others.* Title examiners are to diligently identify defects in title. This can be done either with a harsh sword or with humility and tact. For example, when you find that an abstractor has made an error, whenever possible, call the abstractor to discuss the matter without anyone else knowing. All of us appreciate it when someone helps us to save face in front of our peers. If the error can be resolved behind the scenes, we have accomplished the goal of passing clean title without the unnecessary public blood letting. Besides, abstractors have the capacity to return the favor by catching our mistakes behind the scenes.

Similarly, if you believe that a prior examining attorney has passed title in error (especially if it is this examining attorney), then give the benefit of the doubt to the attorney and simply call the attorney to ask for his or her thought process when passing title. Often times it takes only a phone call to find out who examined the abstract for the prior transaction. Two possible outcomes. The prior examining attorney may have recognized something that you have not and you will be saved the embarrassment of raising of raising an incorrect objection. If the attorney did miss something, he or she will likely appreciate the opportunity to remedy the situation.

2. *Be generous with advice of how to resolve title defects.* In the minority of situations where the objection is truly unusual, take a few moments to provide the non-attorneys who are reading the opinion clear guidance on how to resolve the defect. People appreciate it when you do more than simply identify the objection and say it must be resolved. It is also good form to occasionally draft the simple curative affidavit or document and provide it at no cost. A pleasant surprise. This kind of value-added service also sets us apart from title insurance companies.

### **For closing agents**

Several years ago, a borrower at the closing table asked me whether I ever find myself bored when closing loans. I was ready with my answer because every time I step into a closing, I remind myself that this is a unique and large transaction for the borrower. When I bought my first home, nothing was explained to me (perhaps because I am an attorney) and I left with the uneasy feeling of not understanding the important documents

that were quickly shuffled before me. A few things to remember about the borrowers sitting before you:

1. *This is a unique and significant transaction for the borrower.*

Communicate your intention to explain the terms of the documents and to do your best to answer the borrower's questions, recognizing that some questions may be best answered by others (e.g., the loan originator, a tax preparer).

2. *Some people react with an edge when nervous.* A large financial transaction can sometimes bring out the worst in people when they feel unsure of themselves. Don't take it personally if the borrower seems harsh. In addition, they may have had very little sleep because of packing for a move. The challenges of financing the purchase may also be weighing on them.

3. *Some borrowers come from cultures where there is little trust in government regulation.* In the U.S., many people recognize that residential lending is a highly regulated area of our economy. Loan documents are very standardized. If a borrower wishes to read all the loan documents, where feasible, give them the opportunity to do that. You can come back when they are finished.

By giving a little grace at the closing, the borrower is more likely to have a positive experience. This increases the likelihood of returning to that lender and you may have earned a new client because you were willing to go the extra mile with them rather than to take a dismissive or inconsiderate posture with them. Yes, the documents need to be executed correctly. Yes, the closing needs to be kept to reasonable time parameters. However, when we remember to give grace and connect with the borrowers on a human level, we will ultimately do a better job of serving as representatives of our lender clients.



# 2016 Nuts & Bolts Seminar Johnston (Central Iowa)



## TRANSACTIONAL TRACK Overview of Estate and Gift Planning

**2:45 p.m.- 3:45 p.m.**

**Presented by**

David Repp

Dickinson, Mackaman, Tyler & Hagen, P.C.

699 Walnut Street, Suite 1600

Des Moines, IA 50309

Phone: 515.246.4520



**THURSDAY, OCTOBER 20, 2016**

# OVERVIEW OF ESTATE AND GIFT PLANNING

DAVID M. REPP

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updated 10-04-2016

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## **I. Gathering and Organizing Information for an Estate Plan.**

- A. Names and residences of family members, designated executors, trustees and guardians and devisees under will.
- B. Description and values of assets.
- C. How assets are titled; joint tenancy, tenants in common or owned individually.
- D. Retirement plan assets.
- E. Insurance policies.
- F. See attached intake form.

## **II. What Happens if You Don't Have a Will?**

- A. If you are married, your spouse will receive all of your property. However, if you have children that are not also your spouse's children, your spouse will receive one-half of your property and your children will receive the other half. Iowa Code § 633.212.
  - 1. Note that this only applies to "probate property"—property passing through joint tenancy designations and beneficiary designations (such as insurance or retirement plans) will not be affected by Iowa's intestacy laws.
  - 2. It also will not apply to property in a revocable trust.
  - 3. A special provision (re: step children) allows the surviving spouse in this situation to receive the first \$50,000.00 of estate assets without first sharing with the decedent's children.
  - 4. Adopted children are treated the same as biological children. Iowa Code § 633.223. However, adult adoptions are not recognized by the Iowa courts if the primary purpose is to create an heir. *Schaefer v. Merchants Nat. Bank of Cedar Rapids*, 160 N.W.2d 318 (Iowa 1968); *Elliott v. Hiddleson*, 303 N.W.2d 140 (Iowa 1981).
- B. If you have no spouse, the property will go:
  - 1. To children equally.
  - 2. If a child has died, to that child's children who will share the child's share and so on down the line.

3. If there are no descendants, to the parents, equally, or if only one survives, to the survivor.
4. If no parents are surviving, to the parents' descendants (i.e. siblings of the decedent, then nieces and nephews, etc.).
5. If no one is found there, up to the grandparents and then down from there.
6. If no one can be found there, then to the state of Iowa.
7. The process is known as "intestate succession." Iowa Code § 633.219.

### **III. What a Will Should Contain**

#### **A. A will should contain the following:**

1. A designation of how the testator wants his/her property distributed at death, taking into account appropriate tax planning.
2. A reference to a personal written statement that is dated and either in the testator's handwriting or signed by the testator referring to the devise of tangible personal property owned by the decedent. This way the testator can designate who shall get items of tangible personal property without having to put it in the will. This means that the testator can change this at any time and it does not need to be witnessed. Iowa Code § 633.276.
3. A tax clause to direct the responsibility for payment of taxes. This is particularly important with respect to inheritance taxes which will come out of each person's share unless the will directs that they are to be paid by the residue of the estate.
4. A trust for minor children if appropriate. In the absence of such a trust, or an express provision in the will authorizing distribution to a custodian under the Uniform Transfers to Minors Act, any property for a minor child in excess of \$25,000 must be turned over to a conservator that is appointed by the court. Iowa Code §§ 565B.5; 565B.6; 565B.7(3); 633.108; 633.574; 633.681; & 633.4706.
  - a) This is a very cumbersome procedure--yearly reports must be made to the court; court approval of expenditures and investments must be obtained and a bond must be posted.

- b) Perhaps the biggest drawback is that the assets must be paid out to the child at age 18. With a trust, the decedent can determine the age of distribution.
  - c) Rather than a conservatorship, an executor or personal representative may distribute assets to a custodian under the Uniform Transfers to Minors Act if the court approves such distribution (Iowa Code § 565B.6) or if the will designates a custodian (Iowa Code § 565B.5).
5. A designation of executors, trustees and custodians for minor children, with back-ups to serve in case the named entities are not available. The executor and trustee should be Iowa residents and can either be individuals or an institution authorized to have trust powers.
  6. The power to sell real estate and other property without court order (if this is desired).
  7. The waiver of bond (if desired).
- B. Depending on the size of the estate and the desires of the testator, the will can include tax planning devices, such as a marital and credit trust, a generation-skipping trust, etc.

#### IV. Elections Against the Will

- A. A surviving spouse has the right to elect against a will. If this is done, the spouse will receive approximately one-third of the estate, which can include the homestead and the decedent's revocable trust assets. Iowa Code § 633.236. (See also *Sieh v. Sieh*, 713 N.W.2d 194 (Iowa 2006) and *Estate of Sieh*, 745 N.W.2d 477 (Iowa 2008) (regarding spousal allowance)). This is true even if the surviving spouse released all spousal rights in a deed to the revocable trust. In the *Matter of Frye*, 825 N.W.2d 327 (Ia. Ct. App. 2012). The Iowa Supreme Court in *Sieh* reasoned that creditors of a decedent's estate had the authority to make a claim on the assets of the decedent's revocable trust assets therefore it made sense that a surviving spouse should have the same right to make claim of his or her one-third share. Creditors have the right to make claim on POD deposit accounts and securities so *Sieh* would seem to extend to those assets as well. Iowa Code §§ 524.805(8), 534.302(8), 633D.8. However, the recent *Myers* case says otherwise, but only because of the legislative change to Iowa Code 633.238 in 2009. *In re Matter of the Estate of Myers*, 825 N.W.2d 1 (Iowa 2012) (holding that POD and TOD accounts and annuities are not "personal property included in the decedent's probate estate" as described in the spousal elective share statute in amended Iowa Code Section 633.238 (2009) and the legislative history).

The *Myers* case strongly suggests that IRAs, jointly owned property, insurance proceeds and qualified retirement plans (all assets with beneficiary designations) would likewise not be subject to the elective share as they are nonprobate assets. Prior Iowa Supreme Court cases held that life insurance paid to a nonspouse beneficiary was not subject to the surviving spouse's elective share, *Fleming v. Fleming*, 184 N.W. 296, 297 (Iowa 1921); the surviving tenant's interest in joint property was not subject to the surviving spouse's elective share, *Gunsaulis v. Tingler*, 218 N.W. 2d 575 (Iowa 1974) (second wife denied right to claim elective share in CDs held in joint tenancy with decedent's niece). Qualified retirement plans are subject to federal preemption statutes. ERISA § 417. Iowa Code Section 633.357 says an IRA shall pass to the beneficiary designated in the IRA and shall not be a probate asset.

#### Elective Share Over Nonprobate Assets

	Subject to Elective Share		Not Subject to Elective Share	Authority
	100%	One-third		
Revocable Trust		X		<i>Sieh</i>
POD/TOD			X	<i>Myers</i>
IRA			X	<i>Myers</i>
Life Insurance			X	<i>Fleming</i>
Joint Property			X	<i>Gunsaulis</i>
Qualified Ret. Accts			X	Fed Preemption

- B. COMMENT: A prenuptial agreement can contractually prevent the spouse from electing against the will. *Matter of Estate of Spurgeon*, 572 N.W.2d 595 (Iowa 1998).

## V. An Overview of Death Taxes

### A. Federal Law

1. The federal tax system provides for a unified tax system. This means that the same tax rates and structure apply to both gift and estate taxes. Thus, to the extent an individual uses up the exemption during lifetime by gifting, such individual will lose that exemption at death with respect to estate taxes.
2. Gifts

- a) A person may give \$14,000 per person per year (2016 and 2017 figure) without affecting gift taxes or the exemption. A married couple may give \$28,000 per person per year. This only applies if the gift is one of a present interest; it does not apply if the gift is the right to receive something in the future.
- b) Direct payments of tuition or medical expenses to the provider do not count as gifts.
- c) If the gift exceeds \$14,000 per person, per year, a gift tax return must be filed by April 15th of the year following the date of the gift. This is also true if the spouse joins in the gift.

### 3. Estate taxes

- a) What is included?
  - (1) Probate property--property passing by will or intestacy.
  - (2) Some gifts made within 3 years of death--particularly, insurance policies.
  - (3) Retained property interests--property a person transfers but retains the right to the income, the right to receive the property back, or the right to direct how the property will be distributed.
  - (4) Powers of appointment--property that a person has the right to direct will be paid to him or herself, his or her estate or his or her creditors.
  - (5) Joint property. If a person owns property jointly with a spouse, only 50% of it will be included in the person's estate. If the person owns property jointly with someone else, the percentage includable will be dependent on how much the person contributed to the acquisition of the property. It is assumed that a person contributed 100%; the executor will have the burden to show the other person's contribution.
  - (6) Death benefits of life insurance.
  - (7) Retirement plans and annuities.
- b) Deductions



- (1) Debts, expenses and losses.
- (2) Bequests to charity.
- (3) Bequests to the decedent's spouse:
  - (a) outright bequests;
  - (b) a trust in which the spouse receives all the income for life and has the power to designate, either during life or at death, where the property will go, including to the spouse's estate (called a general power of appointment);
  - (c) a trust for the spouse which is payable to the spouse's estate at his or her death;
  - (d) a trust in which the spouse gets all the income for life, on his or her death the property goes where you designate, and the executor makes a special election to have this qualify for the marital deduction, which also means that the trust will be included in the spouse's estate at death. This is called a QTIP trust (Qualified Terminal Interest Property);

c) Figure the tax as follows:

- (1) Add gross estate and gifts
- (2) Subtract deductions
- (3) Figure tax
- (4) Subtract gift taxes paid
- (5) Subtract applicable credit amount of \$2,125,800, which is equivalent to \$5,450,000 in assets (2016 figure)

d) The applicable credit amount and the applicable exclusion amount during the past ten years are as follows:

Year	Estate Transfer Exempt Amount (Applicable Exclusion Amount)	Lifetime Gift Exempt Amount	Highest Estate and Gift Tax Rates
2002	\$1 million	\$1 million	50%
2003	\$1 million	\$1 million	49%
2004	\$1.5 million	\$1 million	48%
2005	\$1.5 million	\$1 million	47%

Year	Estate Transfer Exempt Amount (Applicable Exclusion Amount)	Lifetime Gift Exempt Amount	Highest Estate and Gift Tax Rates
2006	\$2 million	\$1 million	46%
2007	\$2 million	\$1 million	45%
2008	\$2 million	\$1 million	45%
2009	\$3.5 million	\$1 million	45%
2010	tax repealed	\$1 million	35% (gift tax)
2011	\$5 million	\$5 million	35%
2012*	\$5.12 million	\$5.12 million	35%
2013*	\$5.25 million	\$5.25 million	40%
2014*	\$5.34 million	\$5.34 million	40%
2015*	\$5.43 million	\$5.43 million	40%
2016*	\$5.45 million	\$5.45 million	40%
2017*	\$5.49 million	\$5.49 million	40%

\* unified credit amount adjusted for inflation

#### 4. Generation-Skipping Tax

- a) A generation skipping transfer tax is imposed on gifts or bequests to persons more than one generation removed from the transferor ("skip persons") where there is a "taxable termination," "taxable distribution" or "direct skip." GST tax is in addition to any gift tax or estate tax that may be due. In general, the transferee pays the tax. Transferors have a \$5,450,000 lifetime GST tax exemption (2016 figure) and transfers to grandchildren and collateral heirs who are orphans are exempt. Lifetime exemption matches estate tax sheltered amount. Direct skips are taxed at the highest estate tax rate. To determine the tax on generation-skipping transfers from trusts, multiply the maximum federal estate tax rate (40% in 2016 and after) by the inclusion ratio.

#### B. Iowa Law

##### 1. Inheritance tax

- a) The Iowa estate for an Iowa resident essentially includes all the property in the federal estate except for out-of-state real property and insurance paid to beneficiaries other than the estate. It will also include gifts of more than \$14,000 per person per year made within 3 years of death.
- b) The tax is computed on the value of the share passing to each beneficiary. No tax is payable in an estate not exceeding \$25,000 after the payment of debts. Iowa Code § 450.4(1). For property owned jointly with right of survivorship, only one-half is taxable if owned with spouse.

For all other such property, Federal estate tax rules apply. Federal Estate Tax is deductible in computing the state inheritance tax. There is no tax payable on shares payable to 501(c)(3) organizations, descendants (children, grandchildren, etc.), ascendants (grandparents, etc.), or stepchildren. Iowa Code § 450.4. For all other beneficiaries, tax is payable pursuant to the following table:

SCHEDULE B				SCHEDULE C			
Brother, sister (including half-brother, half-sister), son-in-law, and daughter-in-law. There is NO exemption.				Uncle, aunt, niece, nephew, foster child, cousin, brother-in-law, sister-in-law, step-grandchild, and all other individual persons. There is NO exemption.			
IF THE SHARE IS: Not over \$12,500: Tax is 5% of the share.				IF THE SHARE IS: Not over \$50,000: Tax is 10% of the share.			
	But Not		Of Excess		But Not		Of Excess
Over	Over	Tax is	Over	Over	Over	Tax is	Over
\$12,500	\$ 25,000	\$ 625 + 6%	\$ 12,500	\$ 50,000	\$100,000	\$ 5,000 + 12%	\$ 50,000
25,000	75,000	1,375 + 7%	25,000	100,000	and up	11,000 + 15%	100,000
75,000	100,000	4,875 + 8%	75,000				
100,000	150,000	6,875 + 9%	100,000				
150,000	and up	11,375 + 10%	150,000				
SCHEDULE D				SCHEDULE E			
A firm, corporation, or society organized for profit, including an organization failing to qualify as a charitable, educational, or religious organization, to include social and fraternal organizations that do not qualify under Internal Revenue Code 170(c) or 2055.				A charitable, educational, or religious organization, organized under the law of a foreign country, and bequests for religious services in excess of \$500.00.			
15% of the amount.				10% of the amount.			
SCHEDULE F				SCHEDULE G			
Unknown heirs, as distinguished from beneficiaries who are not presently ascertainable, due to contingent events.				A charitable, religious, educational, and veterans organization as defined in sections 170(c) or 2055 of the Internal Revenue Code (IRC). All other shares to income tax exempt organizations must provide their IRS letter of determination. Organizations may be required to provide evidence that the bequest has restricted the funds to a conforming activity.			
5% of the amount.				Public libraries, public art galleries, hospitals, humane societies, municipal corporations, and bequests for care of cemetery or burial lots of the decedent or the decedent's family, and bequests for religious services the total of which does not exceed \$500.00.			
				Entirely Exempt: No Tax			

2. Iowa Estate Tax. (Repealed January 1, 2005)

**VI. Basic Techniques of Estate Planning**

A. Will v. Living Trust

1. A properly drafted trust will not provide any greater tax savings than will a properly drafted will.
2. If all assets are placed in the trust, it is possible to avoid the need for probate. This may provide some savings in court costs, executor and attorney fees. However, an attorney will still be needed to prepare necessary transfer documents, tax returns and other documents. In addition, a corporate trustee may charge more in a living trust as opposed to a trust in a will.

3. A trust provides a good vehicle for transition of management. If you become incompetent, it is very simple for a successor trustee to step in, although the same result may be achieved through a power of attorney.
4. When a person serves as his or her own trustee, there is no need for a separate taxpayer identification number or to file separate tax returns. Once someone else serves as trustee, a tax i.d. number for the trust must be obtained and separate informational tax returns must be filed.
5. In the experience of the author, only twenty percent (20%) of revocable trusts created actually succeed in accomplishing the primary objective of avoiding probate.

B. Estates under \$5,450,000.

1. If a single person or a married couple own less than \$5,450,000 in assets, there is no need for tax planning to reduce federal estate taxes.
2. A disclaimer will often works well for a couple at this level. Under this will, everything goes outright to the surviving spouse unless the surviving spouse disclaims property at the first spouse's death. If this happens, the amount disclaimed goes into a trust for the surviving spouse's benefit but which will not be included in the surviving spouse's estate. This provides for maximum flexibility and allows the surviving spouse to do some post-death tax planning.

C. Married Couple with Estates Over \$5,450,000

1. If a married person leaves everything to the surviving spouse, there will be no tax because of the marital deduction. However, when the surviving spouse dies, everything will be taxed in his or her estate, and to the extent the estate is greater than \$5,450,000 (2016 figure), federal estate taxes may be payable.
2. Since each person can leave \$5,450,000 free of tax, for larger estates each spouse should create a trust to hold that \$5,450,000 in such a way that the assets of the trust will be available for the surviving spouse, but will not be included in the surviving spouse's estate at his or her later death. The surviving spouse can even be the trustee and can make payments to himself or herself as needed for his or her maintenance in health and reasonable comfort. However, the surviving spouse will not have discretion to pay out the assets for any other purposes such as charitable bequests or to a new spouse.

3. The remaining assets can be paid to the surviving spouse in such a manner that they will be includible in the surviving spouse's estate. This can be in the form of a direct bequest or a trust qualifying for the marital deduction (a general power of appointment trust, an estate trust or a QTIP trust). Some persons prefer to use the QTIP trust because it assures that the assets will be available for the children and that a new spouse will not have access to them.
4. Because the surviving spouse also has the right to leave \$5,450,000 free of tax, with this kind of tax planning a married couple can leave \$10,900,000, this year, to their children without any federal estate tax.
5. In order to do this most effectively, it is best to divide the assets between the two spouses. This way it won't matter who dies first--the maximum amount will be protected. However, for years after 2010, the unused portion of the unified credit of the first spouse to die can be carried over to the second spouse to die (called "portability") so balancing an estate between spouses may not be as important as it was prior to 2011.
6. It is also very important to determine how assets are held. If everything is held as joint tenants with rights of survivorship, then none of this will work, because the assets will pass by operation of law to the surviving spouse. The property should either be split up into separate names or put into both names "as tenants in common."
7. It is also important to coordinate beneficiary designations in insurance policies, retirement plans etc. with the estate plan.

## **VII. Generation-Skipping Trusts**

- A. Since each person can pass \$5.43 million free of generation-skipping tax, wealthier persons should consider creating a trust that will skip generations. The trust can be for the benefit of children during their lives and then to grandchildren. The advantage of this is that the trust will not be taxed in the children's estate.
- B. With proper planning a married couple can pass \$10.86 million to their grandchildren. If an amount becomes payable to a grandchild because the child has predeceased you, that is not considered to be a generation-skipping transfer.

## **VIII. Gifts as Estate Planning Techniques**

- A. Annual Gift Tax Exclusion

1. If a donor can afford it, gifts of \$14,000 per year, per person (2016 figure) can, over the years, substantially reduce your estate at no tax cost--either federal or Iowa--whatsoever. This is called the "annual gift tax exclusion."
2. Spouses can share their annual gift tax exclusion with each other. Thus, one spouse can give \$28,000 per year, per person (2016 figure) provided that the other spouse consents on a timely filed gift tax return. IRC § 2513(a)(1). This is called "gift splitting." The IRS ruled in a 2015 private letter ruling that if a spouse makes split gift to a trust in which his or her spouse is a discretionary beneficiary, then the spouses cannot "split" or "share" the gift and the gift will be considered made entirely by one spouse. PLR 201523003. This is also the case for larger gifts in which the unified credit is utilized.

#### B. Leveraging of Larger Gifts

1. Gifts are valued as of the date of the gift, so any appreciation between the date of the gift and the date of death will not be taxed.
2. A transfer of a minority interest can take into account a discount even if the transfer is to a family member.
  - a) Many appraisers feel that a 30% discount for minority interests is fairly safe.
  - b) This can be coupled with a discount for lack of marketability in many cases.
3. If the donor can afford it, there can be a substantial advantage in using up the \$5,450,000 applicable exclusion amount during life rather than waiting until death.
4. The savings involved in a lifetime gift need to be weighed against the capital gains consequences to the donees; there will be no step-up in basis for the gifted property.

#### C. The Insurance Trust

1. By establishing a properly drawn trust and either transferring a preexisting insurance policy to it or having the trust purchase the policy, a person can remove the death benefits of the policy from his or her estate and still have the proceeds available for the payment of taxes.

2. If a person transfers a preexisting policy to the trust and dies within three years of the transfer, the death benefits will be included in his or her estate.
3. If a person transfers cash to the trust and the trustee purchases an insurance policy, the death benefits will not be included in the person's estate even if he or she died the next day.
4. The trust should provide that the trustee has the power to purchase assets from or lend funds to the decedent's estate. This way the estate will have liquidity to pay taxes.
5. When a person transfers the policy to the trust or transfer cash to it to purchase the insurance or to pay premiums, this constitutes a gift to the beneficiaries of the trust.
  - a) The \$14,000 exclusion only applies to gifts of a present interest; if the benefits are to remain in trust beyond the receipt of the death benefits, special measures must be taken to obtain the \$14,000 exclusion.
  - b) This is achieved through the use of a "Crummey Trust." Under the terms of this trust, each beneficiary of the trust would have the opportunity for a limited period of time to withdraw the beneficiary's pro-rata share of every contribution you make to the trust, up to \$14,000.
  - c) The trustee must give notice to the beneficiaries every time a gift is made to the trust, by, for example, contributing the amount necessary to pay the insurance premiums.
6. Because the estate taxes are due when the surviving spouse dies, many people are purchasing last-to-die policies and putting them into an insurance trust. Because they are insuring both lives, the policies are often less expensive and frequently are a way to obtain insurance when one of the spouses is uninsurable.
7. Another technique used by business owners is to further leverage the insurance trust by purchasing split dollar insurance. With split dollar insurance, the corporation pays the premium and is entitled to a return of the premiums paid on the death of the insured. The insured either pays the pure insurance portion of the policy or is taxed on it pursuant to IRS tables. Under the right circumstances, this can be a very effective way of purchasing insurance for an insurance trust at relatively little cost.

8. Other people have combined an insurance trust with a charitable remainder trust. This way, the assets lost to your heirs by the gift to charity can be replaced with insurance.
- D. Gifts to Minors. In order for gifts to qualify for the annual gift tax exclusion (currently, \$14,000), such gift has to be a “present interest” as opposed to a “future interest.” IRC § 2503(b). Generally, a gift in trust for the benefit of another is a “future interest” that does not qualify for the annual gift tax exclusion unless allowed by an exception. Following are some exceptions:
1. Uniform Transfers to Minors Act
    - a) Gifts made to a custodian under this Act will qualify for the \$14,000 annual gift tax exclusion.
    - b) A person making the gift cannot also be the custodian; if a person dies during the custodianship, the assets will be includible in his or her estate.
    - c) Any assets in the account must be distributed to the child at age 21.
    - d) The income will be taxed to the child, and, if the child is under the age of 18, at the parents' tax rate.
  2. 2503(c) Trust
    - a) This trust will also qualify for the \$14,000 annual gift tax exclusion.
    - b) The trustee must have total discretion to make payments for the benefit of the child. No restrictions, such as the assets can only be used for educational expenses, should be placed on the trustee's ability to make payments.
    - c) If the child dies before distribution of the trust, the assets must be included in the child's estate.
    - d) At 21 the trust must either be paid out to the child or the child must have the right, which can be for a limited period of time, to withdraw the assets in the trust.
    - e) To the extent the income is not paid out to the child, it will be taxed at the trust level. Income above \$12,400 (2016 figure) is at the 39.6% rate. In addition, a 3.8% surtax applies to undistributed net investment income of the trust to the extent such income exceeds \$12,400 (2016 figure) of



adjusted gross income. In addition, the highest capital gain rate increased from 15% to 20% beginning in 2014.

3. 2503(b) Trust

- a) If the terms of the trust require that all the income is to be paid out to the child annually, then the gift of the income interest will qualify for the \$14,000 exclusion. The principal will not so qualify.
- b) With a child, the income interest will be the major interest, so that very little of the unified credit will be used up with such a gift.
- c) The advantage of this kind of a trust is that it can extend much longer than age 21. The disadvantage is that the income must be paid out to a minor child.

4. Crummey Trust

- a) A Crummey Trust can also be a vehicle for gifts to minors.
- b) If the beneficiary has the right, for a limited period of time, to withdraw the amount of the gift to the trust, then the gift will qualify for the \$14,000 exclusion.
- c) If the beneficiary is a minor, notice should be given to the guardian of the minor, or if none has been appointed by the court, the custodian. It is not necessary that a guardian be appointed; it is only necessary for IRS purposes, that one could be appointed.
- d) This type of trust allows for maximum flexibility; however, to the extent income is not distributed to the child, it will be taxed in the trust at what will probably be higher rates.

E. Gifts to Grandchildren

- 1. In order to be exempt from generation-skipping tax, the gift of \$14,000 or less to the grandchild must be a direct skip.
- 2. An outright gift to a grandchild qualifies, as does a gift to the grandchild under the Uniform Transfers to Minors Act.
- 3. If the gift is to a trust, only one grandchild can be a beneficiary of the trust and if the grandchild dies before termination of the trust, the trust must be includable in the grandchild's estate.

## F. Gifts Created by Joint Tenancy

1. The creation of a joint tenancy can have gift tax implications. The elderly will frequently transfer title to their property in the names of one or more of their children to allow the children convenient access to the assets or for testamentary purposes without an understanding of the gift tax consequences.
2. For real estate, joint tenants have an immediate right of partition entitling each joint tenant to an equal pro rata portion of the property. Iowa Code Chapter 651. The transfer of a donor's separate property into the names of the donor and one or more others as joint tenants thus creates a gift to the extent that the new co-tenants did not provide consideration. Treas. Reg. § 25.2515-2(b)(1). See also, *Frederick v. Shorman*, 147 N.W.2d 478 (1966) (holding that a parent's voluntary causing the family home to be placed in joint tenancy with son created a lifetime gift to the son of 50% of the property ownership).
3. For joint bank accounts, each joint tenant has a right to withdraw the entire balance of a bank account subject to the claim of conversion by the other joint tenants to the extent of the other joint tenants contribution to the joint account. *Kettler v. Security National Bank of Sioux City*, 805 N.W. 2d 817 (Ia. Ct. App., 2011). Therefore, the transfer of a donor's bank account into the names of the donor and one or more others as joint tenants does *not* create a gift until the nondonor account holders make a withdrawal with the consent of the donor account holder. Treas. Reg. § 25.2515-2(b)(1).

## IX. Finishing the Estate Plan

- A. Drafting, Reviewing and Executing Estate Planning Documents.
- B. Attachments:
  1. Conflict of Interest Statement for Spousal Estate Planning
  2. Estate Planning Intake Form
  3. Letter to Client Explaining Will and Tax Provisions
  4. Will of Testator
  5. Crummey Trust

6. Combined Healthcare Power of Attorney and Medical Directive (Living Will)
7. Durable Power of Attorney for Financial Decisions
8. Antenuptial Agreement

April 11, 2016

You have expressed an interest in consulting with me regarding an estate plan for both of you. I can represent both of you in this regard provided that your interests do not become adverse to each other. If that situation occurs in the future, I will not be able to continue representing either of you,

You can also be assured that our conversations will remain strictly confidential and will be covered by the attorney/client privilege provided by Iowa law. However, because I represent both of you with regard to your estate plan, anything that either of you tell me in confidence that affects the interest of the other is not protected. As a result, I may be forced to divulge such confidential information to the other or withdraw from representing both of you. Therefore, if you have information that you need to discuss with an attorney and do not want that information shared with your spouse or partner, you should seek separate legal counsel.

To acknowledge that you understand the confidentiality rules expressed above, please sign below.

\_\_\_\_\_  
  
\_\_\_\_\_

**ESTATE PLANNING INFORMATION**

**PART I  
GENERAL INFORMATION**

Name: \_\_\_\_\_

Address: \_\_\_\_\_ Home Telephone: (\_\_\_\_\_) \_\_\_\_\_

\_\_\_\_\_ Work Telephone: (\_\_\_\_\_) \_\_\_\_\_

DOB: \_\_\_\_\_ SSN: \_\_\_\_\_ Employed by: \_\_\_\_\_

**GENERAL INFORMATION CONCERNING YOUR SPOUSE  
(if applicable)**

Name: \_\_\_\_\_

Address: \_\_\_\_\_ Home Telephone: (\_\_\_\_\_) \_\_\_\_\_

\_\_\_\_\_ Work Telephone: (\_\_\_\_\_) \_\_\_\_\_

DOB: \_\_\_\_\_ SSN: \_\_\_\_\_ Employed by: \_\_\_\_\_

**PART II  
GENERAL INFORMATION - CHILDREN**

Full Name	Age	Address	SSN
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

**PART III  
GENERAL INFORMATION RELATING TO WILLS, TRUSTS, POWERS OF ATTORNEY, ETC.**

Name & Address of Executor(s): \_\_\_\_\_

Alternate(s): \_\_\_\_\_

Name & Address of Trustee (s), if Trust is desired: \_\_\_\_\_

Alternate(s): \_\_\_\_\_

Name & Address  
of Guardian(s) for  
Minor Children, if any: \_\_\_\_\_

Alternate(s): \_\_\_\_\_

Name & Address  
of Attorney(s)-in-Fact for  
General Power of Attorney: \_\_\_\_\_

SSN: \_\_\_\_\_ Telephone: (\_\_\_\_\_) \_\_\_\_\_

Alternate(s): \_\_\_\_\_

SSN: \_\_\_\_\_ Telephone: (\_\_\_\_\_) \_\_\_\_\_

Name & Address of Person  
Designated to Make Gifts  
to Attorney(s)-in-Fact:

SSN: \_\_\_\_\_ Telephone: (\_\_\_\_\_) \_\_\_\_\_

When do you want the General Power of Attorney to go into effect?  Upon Disability  Immediately  Date (specify) \_\_\_\_\_

When does your spouse want the General Power of Attorney to go into effect?  Upon Disability  Immediately  
 Date (specify) \_\_\_\_\_

Do you and your spouse (if applicable) want a Combined Living Will and Power of Attorney Regarding Health Care Decisions?  
 Yes  No

If YES, is the information you gave above with regard to the Attorney-in-Fact for the General Power of Attorney the same with regard to the Attorney-in-Fact for Health Care Decisions?  Yes  No If NO, please fill out the following; otherwise, go directly to PART IV.

Name & Address  
of Attorney(s)-in-Fact  
for Health Care: \_\_\_\_\_

SSN: \_\_\_\_\_ Telephone: (\_\_\_\_\_) \_\_\_\_\_

Alternate(s): \_\_\_\_\_

SSN: \_\_\_\_\_ Telephone: (\_\_\_\_\_) \_\_\_\_\_

**PART IV  
BENEFICIARY INFORMATION**

Names & Addresses of  
Individuals Receiving  
Specific Bequests: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Names, Addresses  
& Proportions of  
Specific Bequest to  
Residuary Beneficiaries:

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Special Provisions:

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Disaster Clause (in the event no beneficiaries survive):

Do you want your estate to go to your heirs at law?  Yes  No

Do you want one-half of your estate to go to each spouse's heirs at law?  Yes  No

Other: \_\_\_\_\_

**PART V  
ASSETS**  
ATTACH ADDITIONAL SHEETS IF NECESSARY

REAL ESTATE (please list residential property first):

Street Address of Property	How is title held?	Present Value
_____	_____	_____
_____	_____	_____
_____	_____	_____

STOCKS, BONDS & MUTUAL FUNDS:

Name of Stock	No. of shares	Owner(s)	Approximate Value
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

GOVERNMENT SECURITIES:

Type & Rate	Face Value	Maturity Date	Name(s) on Security
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

UNITED STATES E, EE, H, AND/OR HH BONDS:

Face Value	Date of Purchase	Maturity Date	Name(s) on Bonds
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

LIFE INSURANCE:

Company	Death Benefit	Cash Value	Insured	Beneficiary	Owner
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

If there are any loans against the above-described policies, please indicate which policies and the amount of the loans: \_\_\_\_\_  
\_\_\_\_\_

BANK ACCOUNTS, CERTIFICATES OF DEPOSIT, ETC.:

Name & Location of Institution	Type of Account	Name(s) on Account	Present Value
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Do you have a safety deposit box? If so, please give locations, name of depositor(s), and a description of contents: \_\_\_\_\_  
\_\_\_\_\_



RETIREMENT PLANS, ANNUITIES AND OTHER ACCOUNTS:

Type of Plan	Institution or Holding Company	Beneficiary	Present Value
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

OTHER PERSONAL PROPERTY (for example, automobiles, collections, art, RVs, jewelry, antiques, etc.):

Description of Property	Owner(s)	Approximate Value
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Do you anticipate any large increases in your estate in the future (inheritances, substantial yearly income increase, etc.)? If so, please explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**PART VI  
LIABILITIES**

REAL ESTATE MORTGAGES:

Name of Lender	Present Approximate Balance Due
_____	_____
_____	_____

OTHER DEBTS AND OBLIGATIONS:

Name of Payee	Present Approximate Balance Due
_____	_____
_____	_____
_____	_____
_____	_____

April 11, 2016

Thurston Howell III  
Eunice "Lovey" Wentworth Howell  
1234 Ivy Place  
Minburn, Iowa 50167

**RE: Wills**

Dear Mr. and Mrs. Howell:

I enjoyed meeting with both of you regarding your wills and other estate planning. Enclosed are drafts of your wills for you to review. The wills establish trusts for your children that generally allow the surviving spouse as much control as possible over the trust assets without losing valuable estate tax benefits. The trust assets will be distributed to your children as each child reaches the ages of 50, 55 and 60. Of course you are free to have me change any of this.

I also wanted to summarize some of what we spoke about at our meeting. Estate planning can be at times confusing and I have found that it helps to describe some of what we are wanting to accomplish in writing before you actually review the documents.

Every estate of an individual is potentially subject to Federal estate tax on the value of such person's net assets at the time of death at a progressive rate that tops out at 40 percent. Fortunately, there exist some important exemptions and credits that mitigate the tax burden an estate would ordinarily bear. The most important is probably the unified credit. The Internal Revenue Code (the "Code") allows each individual the opportunity to apply a credit of \$2,125,800 (2016 figure) against the estate tax that their estate would ordinarily have to pay. This credit works out to be the equivalent of estate tax on the first \$5,450,000 of taxable assets in an estate. Therefore, every individual has the potential of devising up to \$5,450,000 of assets to the beneficiaries of their choice.

The gift tax law is unified with the estate tax. Therefore, an individual cannot avoid estate tax by making deathbed gifts to his or her children or other beneficiaries. Every person, however, is allowed to make gifts of less than \$14,000 annually free of any tax. Couples, of course, can make combined gifts of \$28,000.

A special rule applies to spouses and certain charities. No gift or estate tax is payable on gifts or bequests to spouses or charities exempt under Code Section 501(c)(3) no matter what the amount. This special rule allows for several planning opportunities. Many married couples will

Thurston Howell III

October 16, 2012

Page 2

structure an estate plan to bequest the first \$5,450,000 of the assets in their estate to their children and the remainder to their surviving spouse. The estate would owe no estate tax as a result. Instead of outright bequests to children, the assets can be given in trust for their benefit to be distributed to them at a later time or for certain specified purposes such as their college education. Likewise, a bequest to a spouse can be structured in trust that would prevent the spouse from devising or gifting such property to another person.

You should be aware of the types of assets that are subject to estate tax. Generally all property owned at death will be included in the taxable estate. This includes the value of a home, a business, investments, life insurance death benefits and retirement plans. The death benefits of a life insurance policy will frequently put an estate in a taxable situation. There are methods, however, that may be used to exclude life insurance from your taxable estate such as transferring the policies to an irrevocable life insurance trust.

You should also be cognizant of how you own your assets. Assets held as joint tenants with rights of survivorship with your spouse will pass directly to your spouse and completely bypass any trust set up in your will. If all your assets are held in such a manner, the second spouse to die may have an unduly large amount of estate tax to pay because your spouse receives all your assets rather than your children (or a trust for the benefit of your children). Assets such as security brokerage accounts and real estate are commonly owned as joint tenants with rights of survivorship. To alleviate such a problem, you can have the title of the assets changed so that you own them with your spouse as "tenants in common." As tenants in common, the value of your interest in the asset is transferred pursuant to the terms of your will instead of directly to the surviving joint tenant. Your goal should be to have each spouse own assets in his or her own name up to the unified credit amount (\$5,450,000 in 2016).

The Iowa legislature recently amended Iowa's inheritance tax. Generally, no inheritance tax will be due for bequests to spouses and lineal descendants and ancestors. Inheritance tax is still due on devises to all other individuals at progressive rates that top out at 15 percent. Unlike the Federal estate tax, the inheritance tax does not have an equivalent of a unified credit.

Please call if you have any questions.

Sincerely,

David M. Repp

encl.

**LAST WILL AND TESTAMENT  
OF  
THURSTON HOWELL III**

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I, THURSTON HOWELL III, of Minburn, Dallas County, Iowa, do make, publish and declare this instrument to be my Last Will and Testament and revoke all former Wills and Codicils executed by me.

**ARTICLE I**

I declare that I am married, that my wife is LOVEY HOWELL (hereinafter "my wife"), and that I have the following children: THURSTON HOWELL IV and THURSTON HOWELL V (hereinafter, "my children").

**[Note: Always include an afterborn children clause unless the testator is absolutely certain they will not bear or adopt more children]**

Any children born to or adopted by me after the date of the execution of this instrument are to share in my estate in accordance with its provisions.

**ARTICLE II**

If my wife survives me, then subject to the provisions below with respect to a written statement, I give to her all of my personal and household effects, automobiles, jewelry, recreational equipment and collections of any kind, and any insurance policies thereon.

If my wife does not survive me, then subject to the provisions of the following paragraph, I give such tangible personal property to my children who survive me, to be divided between them by my Executor in as nearly equal portions as may be practicable, having due regard to the preferences of my children.

If there is a written statement in existence at the time of my death, dated and which is either in my handwriting or signed by me, concerning the disposition of any of my tangible personal property, as that term is defined in Section 633.276, Code of Iowa (2015), such property shall be disposed of in accordance therewith.

**[Note: A form that the testator can use for this purpose is included at the end of this will document]**

**ARTICLE III**

I give my wife the residential property owned by me and where we resided at my death, including any lands adjacent thereto, irrespective of area. If my wife does not survive me, this bequest to her shall lapse and this property shall be distributed as part of the residue of my estate.

**[Note: Most residences are owned as joint tenants w/rights of survivorship and, in such case, this Article would not be necessary. Do not use this Article if the testator and spouse own their residence as tenants in common and need to split their estates for estate tax purposes]**

ARTICLE IV

If my wife survives me (and if the order of our deaths is unknown she shall be presumed to have predeceased me), I direct my Executor to set aside assets of my estate, either in cash or in kind, having a value as of the date selected by my Executor for valuation of those assets for federal estate tax purposes equal to the maximum marital deduction allowable to my estate for federal estate tax purposes, less the aggregate amount of marital deductions, if any, allowable to my estate by reason of interests in property passing or which have passed to my wife otherwise than by the terms of this Article, and less also the amount, if any, required to increase my taxable estate to the maximum amount that, considering the deduction under Section 2057 of the Internal Revenue Code, if elected by my Executor, the applicable credit amount and the state death tax credit allowable to my estate (except to the extent that it will increase state death taxes), will result in no federal estate tax being payable by reason of my death. In determining the amount hereunder, my Executor shall assume that all payments and legacies, if any, under other articles of this Will have been paid in full. Any asset which does not qualify for the marital deduction shall be excluded, and unproductive property shall not be included without the consent of my wife. The assets so set aside shall have an aggregate fair market value fairly representative of the appreciation or depreciation in value, to the date or dates of each distribution, of all assets thus available for distribution.

[Note: This paragraph divides the estate in two based on the current unified credit for Federal estate tax purposes]

[Note: In the alternative to the following paragraphs that create a marital trust for the spouse, assets could be distributed outright to the spouse: "The assets so set aside shall be distributed to my spouse."]

The assets so set aside shall be called the THURSTON HOWELL III MARITAL TRUST. I give the THURSTON HOWELL III MARITAL TRUST, and all the assets comprising it, to my wife, as Trustee. It is my intention that the THURSTON HOWELL III MARITAL TRUST shall qualify for the federal estate tax marital deduction as "qualified terminable interest property". I direct that the provisions of this Will be construed and the THURSTON HOWELL III MARITAL TRUST be administered as to so qualify. If my wife shall disclaim any portion of this Trust, such portion shall be added to and held and distributed as part of the THURSTON HOWELL III FAMILY TRUST. The THURSTON HOWELL III MARITAL TRUST shall be held, administered and distributed as follows:

A. During the life of my wife:

1. My Trustee shall pay to my wife, in annual or more frequent installments, all of the net income of the trust.

2. In addition to the payments of income, my Trustee may pay to my wife such sums from the principal of this Trust as my Trustee deems necessary or advisable for her maintenance in health and reasonable comfort.

B. At the death of my wife the principal of the THURSTON HOWELL III MARITAL TRUST shall be distributed to the Trustee of the THURSTON HOWELL III FAMILY TRUST to be held and distributed according to the terms of such Trust; however, before such distribution, my Trustee shall pay from the principal of the THURSTON HOWELL III MARITAL TRUST its pro rata share of all inheritance, estate, succession or other similar taxes otherwise payable by my wife's estate or the recipients thereof, resulting from the inclusion of the THURSTON HOWELL III MARITAL TRUST assets in my wife's estate. Any accumulated or undistributed income shall be paid to my wife's estate.

ARTICLE V

All the residue of my estate, which for convenience may be called the THURSTON HOWELL III FAMILY TRUST, I give to my wife, as Trustee, to be by her managed, administered, and distributed as follows:

A. During the life of my wife my Trustee may pay (or not pay) to or apply for the benefit of my wife and any descendants of mine such amounts from the income or principal of this Trust as the Trustee in her discretion deems necessary for their maintenance in health and reasonable comfort and their education. Any such payments need not be equal between or among my wife and my descendants either as individuals or as separate groups.

[Note: Iowa Code Section 633.3105 may subject a beneficiary's interest to the claims of his or her creditors if the beneficiary were also a trustee with discretionary authority to distribute income or corpus of a trust to him or herself. In this provision, the spouse is trustee with discretion to distribute assets to him or herself and thus may subject the trust's assets to the claims of the spouse's creditors. If asset protection from creditor is important to the testator, consider having a non-beneficiary serve as trustee or co-trustee]

B. With respect to the Trustee's power to invade principal for the benefit of my wife, it is my wish that, unless there are assets which the Trustee deems advisable to retain in the THURSTON HOWELL III MARITAL TRUST, the Trustee's power to invade principal shall not be utilized until the income and principal of the THURSTON HOWELL III MARITAL TRUST have been exhausted.

C. On the death of my wife, or on my death if she does not survive me, the THURSTON HOWELL III FAMILY TRUST shall be held and distributed as follows:

1. My Trustee shall divide the Trust into separate shares of equal value, creating one such separate share for each of my children who may then be living and one such separate share for the descendants, collectively, of each child of mine who may then be deceased, leaving one or more descendants then living.

2. My Trustee shall promptly pay and distribute each separate share thus created for the descendants of a deceased child to such descendants, per stirpes, subject to the provisions below regarding postponement of distribution. A share created for a child of mine shall be held and distributed as follows:

a. Until such child attains the age of sixty (60) years, my Trustee may pay (or not pay) to him or her such amounts of the income or principal of the share as my Trustee deems appropriate for his or her maintenance in health and reasonable comfort or education.

[Note: Assets held in trust are protected from a beneficiary's creditors so consider keeping assets in trust for a long time period]

b. When such child attains the age of fifty (50) years, my Trustee shall distribute to him or her one-third (1/3rd) of the share as then constituted; when such child attains the age of fifty-five (55) years, my Trustee shall distribute to him or her one-half (1/2) of the share as then constituted; and when such child attains the age of sixty (60) years, my Trustee shall distribute to him or her the entire remaining amount of the share. If, at the time of the division of this trust into shares, my child has already attained the age of fifty (50), fifty-five (55) or sixty (60), my Trustee shall

distribute to him or her one-third (1/3rd), two-thirds (2/3rds) or all of the share, as the case may be.

c. If a child of mine should die prior to complete distribution of his or her share, my Trustee shall pay the remaining amount of the share to such child's then living descendants, per stirpes, or if none, to my then living descendants, per stirpes, subject to the provisions below regarding postponement of distribution and subject also to the provision that if an amount becomes payable to a person for whom a share is then being held in trust hereunder, such amount shall be added to that share.

[Note: Consider adding the following language to give some direction to the Trustee:

D. In determining whether or not to make a distribution on account of a beneficiary's "reasonable comfort," my Trustee shall consider the financial responsibility, judgment and maturity of such beneficiary, including whether or not, at the time of such determination, such beneficiary (a) is suffering from any physical, mental, emotional or other condition that might adversely affect his ability to properly manage, invest and conserve property of the value that would be distributed to him or her, (b) is at such time, or previously has been, a substantial user of or addicted to a substance the use of which might adversely affect his or her ability to manage, invest and conserve property of such a value, (c) has demonstrated financial instability and/or an inability to manage, invest and conserve his or her property, (d) is going through a period of emotional, marital or other stress that might affect his or her ability to manage, invest and conserve such property and/or (e) is then under the influence of one or more individuals or organizations who or which in the opinion of my Trustee may successfully endeavor to induce the beneficiary to part with such property.]

[Note: See alternative form of drug testing provision at the end of this will document]

## ARTICLE VI

The following provisions shall apply to all beneficiaries hereunder:

A. Should any portion of any trust created hereby become distributable to a person who has not reached the age of twenty-one (21) years, it shall immediately vest in such person, but the Trustee shall (1) establish therewith a custodianship for the person under the Uniform Transfers to Minors Act, or (2) retain possession of such portion as a separate trust until the person reaches the age of twenty-one (21) years, meanwhile paying to or applying for the benefit of such person so much of the income and principal of such portion as the Trustee deems necessary or advisable to provide for his or her maintenance in health and reasonable comfort and education, and adding to principal any income not so paid.

[Note: This provision should always use 21 years unless the drafter is confident that an age greater than 21 years will not violate the rule against perpetuities - Iowa Code § 558.68]

B. Discretionary distributions shall not be treated as advancements to the distributees. If the Trustee deems it advisable to advance principal to a beneficiary, she may lend such amount or amounts to such beneficiary on such terms and for such term as she deems advisable. If the total amount so lent exceeds the amount which such

beneficiary is entitled to receive ultimately, the Trustee, in her discretion, may treat such excess as a distribution and need not attempt its collection.

C. On the death of an income beneficiary of a trust, the Trustee may pay first from undistributed income, and if that be not sufficient, from principal (1) any accrued taxes, expenses or compensation which are proper, and (2) expenses of last illness and burial of the deceased income beneficiary. The balance of income accrued or collected but not distributed or otherwise disbursed at the death of any income beneficiary shall be payable as income to the beneficiaries entitled to the next estate or interest.

D. If at any time before final distribution of any trust created hereunder there is not in existence anyone who is or might become entitled to receive benefits under the provisions of this instrument, any portion of the trust estate then remaining shall be divided into equal shares and shall be distributed one share to my then heirs-at-law, and one share to the then heirs-at-law of my wife in the proportions determined as though we had then died intestate, residents of the State of Iowa, but in accordance with the laws of the State of Iowa now in effect relating to the descent of property of intestate decedents.

[Note: Consider adding a no-contest clause. However, this could thwart legitimate claims as well. Use with caution.]

E. In case any beneficiary shall contest the terms of this Will, in part or in whole, and attempt to prevent the proof thereof, then I declare that such contest and such attempt shall cancel and terminate all provisions for or in favor of the beneficiary making or inciting such contest, without regard to whether such contest shall succeed or not, and I hereby declare all and any provisions herein in favor of the beneficiary so making such contest, or attempting to, or inciting the same, to be revoked and of no force and effect.]

#### ARTICLE VII

My Executor shall pay from the residue of my estate all estate and inheritance taxes assessed by reason of my death (except generation skipping taxes). I waive for my estate all right of reimbursement for any payments made pursuant to this Article except to the extent that my Executor has a right by reason of Sections 2207 and 2207A of the Internal Revenue Code to seek contribution or reimbursement for taxes resulting from the inclusion in my estate of property over which I have a general power of appointment or in which I have a qualified income interest for life. Interest and penalties concerning any tax shall be paid and charged in the same manner as the tax.

#### ARTICLE VIII

I direct that the Trustee serving under this instrument shall not be required to furnish bond or to give notice to or obtain the approval of any court or person in connection with the performance of the duties of such Trustee.

During the term of, and for a reasonable period of time after the termination of, each trust, the Trustee, acting as a fiduciary, shall have all of the powers, rights and discretions possessed by trustees generally, such powers, rights and discretions as are presently set forth in the Iowa Probate Code and Iowa Trust Code, and in addition specific authority:



- A. To retain any property or undivided interests in property received from any source, regardless of any lack of diversification, risk or nonproductivity, except that unproductive property shall not be held as an asset of the THURSTON HOWELL III MARITAL TRUST without the consent of my wife.
- B. To operate, maintain, alter, improve or otherwise manage all property held as a part of the trust and to invest and reinvest the trust estate in property or undivided interests in property of any type or description without being limited by any statute or rule of law concerning investments by trustees.
- C. To borrow or lend money; to sell, transfer and convey, to let or lease for any term, to mortgage, pledge or exchange for any purpose, or otherwise to dispose of, and generally to deal with, any property, at such time or times, and on such terms or conditions, in such manner and from or to such persons (including the Trustee when acting in her individual capacity and when acting in a fiduciary capacity) as the Trustee in her discretion shall determine.
- D. To determine fairly and equitably the manner of ascertainment of income and principal and the allocation of all receipts and disbursements to income and principal accounts.
- E. To make any distribution or division of the trust estate in cash or in kind or both, pro rata or non pro rata, and to determine the value of any such property.
- F. To execute deeds, transfers, leases, contracts and other instruments of any kind.
- G. To pay all reasonable expenses and charges of the trusts; to employ agents and counsel, and to delegate to them such powers as the Trustee considers desirable.
- H. To continue any farming operation which may be acquired by the trust, to operate any farm with hired labor, tenants, or share croppers and to employ agents; to lease any farm for cash or a share of the crops; to acquire farm machinery, equipment, and livestock; to construct and improve buildings; to make or obtain loans at the prevailing rate of interest; to employ conservation practices; to manage any timber; in general, to perform such acts as my Trustee deems appropriate using such methods as are commonly employed by other farm owners in the community in which the farm property is located.
- I. To develop and subdivide, to dedicate, to vacate, to sell on any terms, to grant options to purchase or lease, to donate, mortgage or pledge, to lease for any period of time even extending beyond the term of the trust, to partition or to exchange, to grant or release easements and interests in, and generally to deal with, any real property in the same manner that I could have during my lifetime.
- J. To pay herself reasonable compensation.
- K. To continue, either as a going concern or for purposes of liquidation, without liability for errors in judgment, any business; to delegate duties, with requisite powers, to any employee, manager, or partner as she may deem proper without liability for such delegation except for the Trustee's own negligence; to be compensated for her services directly by the business, estate, or trust; to use in the conduct of the business not only my capital investment therein but also additional capital out of my general estate or trust as she may deem proper; to borrow money and secure the loan not only with my interest in the business but also with any part of my estate or trust; to organize, either by herself or with others, a sole proprietorship, a corporation, or a partnership, either general or limited, a limited liability company or a limited liability partnership; to deposit

securities with voting trustees; to vote stock for or against any proposition submitted at any stockholders' meeting, including charter renewals for any period of time; to sell or liquidate any business interest on such terms as shall be for the best interest of my estate and trusts; generally, to exercise with respect to the continuation, management, sale, or liquidation of any business interest all the powers which I could have exercised during my lifetime.

L. To retain any asset expressly including stock in closely held corporation(s), which I may own at my death, regardless of whether it leaves a disproportionately large part of my estate or trust estate invested in one type of property, and to receive from any source additional properties acceptable to the Trustee.

M. To expend such funds as may be reasonably necessary to make additions or improvements to any residence maintained by the custodian of my children to accommodate my children in such residence, without reimbursement from such custodian for any increase in value in the residence.

#### **ARTICLE IX**

Neither the income nor the principal of any trust created hereunder shall be alienable by any beneficiary, either by assignment or by any other method, and the same shall not be subject to be taken by his or her creditors by any process whatsoever. However, this provision shall not restrict a beneficiary's right to disclaim any interest herein created.

#### **ARTICLE X**

The following provisions shall apply to the Trustee serving hereunder:

A. No person dealing with the Trustee shall be bound to see to the application of trust funds or property, or to inquire into the power or the authority of the Trustee, or into the validity, expediency, or propriety of any action taken or any transaction entered into by her.

B. It is my desire that the Trustee be able to act efficiently and economically and with reasonable confidence and certainty in the administration of any trust created by this instrument. In order to save time, unnecessary costs and expenses and to avoid the publicity which a judicial settlement might entail, the Trustee of any trust hereunder is expressly exonerated from qualifying with and making reports or accountings, either interim or final, to any court except as the Trustee may desire to do so, or as she may be required to do so by law or by a court upon the application of an interested party for good cause shown.

However, the Trustee shall: (1) maintain records of the trust assets and the receipts and disbursements, which records shall be subject to inspection by any beneficiary hereunder at reasonable intervals and on reasonable notice, and (2) when called upon to do so but no more frequently than annually, render an account of each trust hereunder to the persons who may at that time be entitled to receive the income thereof. The account of the Trustee shall be rendered directly to those persons who are competent. As to a person who is under a legal disability, she shall render her account to his or her conservator, if any, or, if none, to the person having custody of him or her.

#### **ARTICLE XI**

The following provisions shall apply to the Executor serving hereunder and to property passing to and through her:

A. I direct the Executor, during a reasonable period of administration, to take possession of, occupy, manage and control all property in my estate, and to collect and receive the rents, income, dividends and profits therefrom, and to pay the taxes imposed thereon and the charges and expenses reasonably necessary to maintain the property during administration.

B. I authorize and empower the Executor to join with my wife in filing joint income and gift tax returns. Any resulting income or gift tax liability (and penalties and interest thereon) shall be borne by my estate, and any refund of any such tax (and interest thereon) shall inure to the benefit of my wife, except such portion of either the liability or the refund, as the case may be, as my wife and the Executor agree should be either borne by my wife or inure to my estate.

C. I further empower the Executor to make such elections under the tax laws applicable to my estate as may be deemed expedient and desirable, even though the elections so made may substantially affect (beneficially or adversely) the interests of the various beneficiaries in the principal or income of my estate. The action of the Executor with respect to elections made shall be conclusive and binding upon all beneficiaries.

D. If any life insurance proceeds are paid to the Executor or to my estate, I direct that such proceeds shall pass under the provisions of this Will and not as otherwise directed by the statutes of Iowa. Such life insurance proceeds, however, are to remain exempt from the claims of creditors, unless the Executor in her discretion chooses to waive such exemption.

[Note: Under Iowa law, proceeds of insurance paid to a decedent's estate are exempt from the claims of the decedent's creditors unless a contract or express provision in the decedent's will provides otherwise. See I.C. § 633.333 (2015). Further, Iowa case law has muddied the waters concerning whether charges, which include per I.C. § 633.3(4) (2015) federal and state estate taxes, and costs of administration can be paid from such proceeds without express authorization. See Kurtz, § 9.19.]

E. If under the terms of any trust created by this Will any portion of my estate would upon receipt by the Trustee be distributable immediately to a person or persons named in such trust, I direct that any such portion of my estate shall be distributed directly by my Executor to said person or persons, and that only the balance of such portion of my estate, if any, shall pass to the Trustee of such trust, notwithstanding the provisions of such trust.

F. Unless there are compelling reasons not to do so, the Executor shall make whatever elections are necessary to qualify the THURSTON HOWELL III MARITAL TRUST for the federal estate tax marital deduction.

## ARTICLE XII

At my death should a custodian be necessary for a child of mine, it is my wish that GILLIGAN and GINGER, of Panora, Iowa, be such custodian and if circumstances require the appointment of a legal guardian or conservator, that GILLIGAN and GINGER be appointed such guardian or conservator, or both, as the case may be.

**ARTICLE XIII**

I nominate and appoint my wife as Executor of this Will. I grant to my Executor all powers granted to my Trustee, all of which shall be in addition to and not in limitation of those powers which my Executor would otherwise possess. If my wife shall for any reason be unwilling or unable to serve as Executor, I direct that THE PROFESSOR and MARY ANN, of Grand Junction, Iowa, shall serve as successor Executor, with all the same powers, duties and discretions. No bond shall be required of any Executor appointed pursuant to this Will. No Executor shall be liable or responsible for the acts or omissions of any other Executor in which the Executor sought to be held did not participate or concur.

If my wife shall for any reason be unwilling or unable to serve as Trustee, I direct that PROFESSOR and MARY ANN, of Grand Junction, Iowa, shall serve as successor Co-Trustees, with all the same powers, duties and discretions. If either Co-Trustee shall be unable or unwilling to serve, I direct that the other shall serve as sole Trustee.

A Trustee serving hereunder shall be deemed to have resigned or be unable to serve if (1) he or she executes a written resignation or (2) a physician who has been consulted concerning the Trustee's physical or mental health certifies in writing that, in his or her opinion, the Trustee is no longer capable, by reason of either a physical or mental condition, of competently handling financial affairs or that the Trustee's ability to do so has become substantially impaired or (3) he or she dies. The Trust shall indemnify and hold the physician harmless from any claims asserted against the physician by reason of making such certification.

To save expense and simplify procedure in my estate and trusts, I direct that no guardian ad litem or similar proceedings shall be required. Any fiduciary shall be released and relieved from any further responsibility or liability for its acts occurring during a period for which it has received the written approval of the adult beneficiaries. The parent, legal guardian, or conservator of a beneficiary may represent a beneficiary under a legal disability. Any notice to or action by such parent, legal guardian, or conservator shall be binding on such beneficiary, and have the same effect as if delivered to or executed by an adult or competent beneficiary.

[Note: Other options are available for fiduciary appointments:

B. Right to Appoint Other Fiduciaries: The individual Fiduciary, at any time in office, is authorized, in the Fiduciary's absolute discretion, at any time and from time to time, by an instrument in writing, signed and acknowledged, to appoint additional or successor Fiduciaries, either individual or corporate, to act in addition or in succession to the Fiduciary designated herein or pursuant to the power herein granted, provided, however, that in no event shall there be more than three Fiduciaries, including one corporate Fiduciary, of the trust in office at the same time.

C. Formalities of Appointment: Any instrument appointing additional or successor Fiduciaries shall be revocable by the individual Fiduciary at the time being in office, whether or not such Fiduciary shall be the Fiduciary signing such instrument, at any time prior to the assumption of duties of Fiduciary by the appointee. In the event the Fiduciary shall have executed more than one instrument appointment additional or successor Fiduciaries, the instrument that shall bear the most recent date and shall be unrevoked shall govern.

D. Appointment of Fiduciaries by Beneficiaries:

Whenever no Fiduciary shall be acting hereunder and no successor has been appointed in accordance with the foregoing provisions and the trust has not then terminated in accordance with the terms of this instrument, then a successor Fiduciary shall be appointed by the holder or the majority vote of the holders of any general power of appointment over the trust property, whether inter vivos or testamentary, or if there shall be no such holders, then by a majority vote of all of the beneficiaries of the trust then living. For this purpose the beneficiaries of the trust shall be limited to (1) the person or persons then living and entitled to the income of the trust, (2) those persons, then living, presumptively entitled to the trust principal if the trust were then terminating, and (3) those persons, then living, who might receive either the income or principal of the trust in the exercise of discretion by the Fiduciary hereunder. In the event that any one or more of the designated living persons entitled to vote for a successor Fiduciary is a minor or under other legal disability, then that person's guardian or conservator, or in the absence of such, that person's parent or either of them, or, in the absence of such, any other beneficiary hereunder not under a disability who has a substantially identical interest in the trust to such person shall have full power and authority on behalf of such person to vote in the selection of a successor Fiduciary.

E. Power to Delegate: Any individual Fiduciary of any trust created hereunder may delegate any right, power, duty, authority or discretion such Fiduciary may have to any other Fiduciary of that trust, by an instrument in writing, signed and acknowledged and delivered to such other fiduciary and for such period or periods of time as such Fiduciary may designate in such written instrument. Any such delegation shall be revocable at any time by the Fiduciary signing such instrument of delegation. Notwithstanding the foregoing, no Fiduciary shall delegate to any other Fiduciary hereunder any right, power, duty, authority, or discretion which such other Fiduciary can not exercise hereunder.

F. Power to Remove: Any corporate trustee acting hereunder may be removed by the vote of two-thirds of those persons who under the preceding provisions of this trust would be entitled to vote for a successor trustee whenever no Fiduciary shall be acting hereunder and by an instrument in writing, signed and acknowledged, in duplicate, one copy of which shall be delivered to the corporate trustee being removed and one copy of which shall be delivered to the remaining Fiduciary, if any, or if there shall be no remaining Fiduciary, to the next successor Fiduciary. Nothing herein, however, shall be construed as excusing such removed Fiduciary from rendering accounts hereunder.

G. Right to Resign: Any Fiduciary of any trust created hereunder may at any time resign by an instrument in writing, signed and acknowledged and delivered to the remaining co-Fiduciary of the trust, or, if none, to the next successor Fiduciary. Nothing herein, however, shall be construed as excusing such resigning Fiduciary from rendering accounts hereunder.

H. No Bond Required: No bond or other security shall be required of any Fiduciary designated herein or pursuant to the power herein granted for the faithful performance of his, her or its duties.

I. Post-termination Rights: The title, powers, duties, immunities and discretions conferred upon the Fiduciaries by this trust shall continue after the

termination of any trust created hereunder until the principal of the trust shall be finally distributed.

J. **Meaning of Trustee and Fiduciary:** The terms "Trustee" or "Trustees" shall be taken to mean the trustee or trustees for the time being in office of any trust with respect to which they have been designated to act as a trustee, and the term "Fiduciary" or "Fiduciaries" shall be taken to mean a person serving as a Trustee or the persons serving as Trustees, and each such Trustee or Fiduciary shall have the same rights, powers, duties, authority, and privileges, whether or not discretionary, as if originally appointed hereunder, except as may otherwise be expressly provided herein to the contrary. When any such term is preceded by the word "individual," then such word shall be deemed to refer to a Trustee or Fiduciary who is not a bank or trust company.

If a beneficiary of any trust created hereunder shall be acting as a Fiduciary hereunder, such beneficiary shall not exercise, or participate in the exercise, of any discretionary power granted to the Fiduciaries to distribute the income or principal of the trust, directly or indirectly to such beneficiary, unless otherwise expressly provided to the contrary herein. ]

#### ARTICLE XIV

A. When under any provision of this Will the principal of any trust created hereunder or my residuary estate becomes distributable "per stirpes" to the descendants of any *designated person* or persons, the principal of such trust, or my residuary estate, as the case may be, shall be divided among and distributed to such descendants as follows: The principal or my residuary estate, as the case may be, shall be divided into as many equal shares as there shall be children of such *designated person* then living and children of such designated person who shall not then be living but who shall have died leaving issue who shall then be living. No share shall be set aside for any deceased child of such *designated person* who shall have died leaving no surviving issue.

Following such division, one such share shall then be distributed to each such surviving child and one share shall be distributed among the issue of such deceased child. The issue of any deceased child shall take that subshare in such share equal to what such issue would have taken therein if such share had been the principal of such trust or my residuary estate, as the case may be, and such deceased child had been such *designated person*.

For purposes of this provision, the term child or children shall include an adopted child or children.

B. Wherever in this Will the meaning so dictates, all references to the singular shall include the plural, all references to the plural shall include the singular, and all references to any particular gender shall include either or both as well as the neuter.

I subscribe this my Last Will and Testament on this \_\_\_ day of \_\_\_\_\_, 2016

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THURSTON HOWELL III

**ATTESTATION CLAUSE**

On this \_\_\_ day of \_\_\_\_\_, 2016, the foregoing instrument was in our presence signed and executed by THURSTON HOWELL III and by him declared to us to be his Last Will and Testament and, at his request and in his presence and in the presence of each other, we have subscribed our names as witnesses hereto.

\_\_\_\_\_ of \_\_\_\_\_

\_\_\_\_\_ of \_\_\_\_\_

**AFFIDAVIT**

STATE OF IOWA        )  
                                  )SS:  
COUNTY OF POLK     )

We, the undersigned THURSTON HOWELL III, \_\_\_\_\_ and \_\_\_\_\_, the Testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, declare to the undersigned authority that at the date of the instrument, we all knew the identity of each other; the instrument was exhibited to the witnesses by the Testator, who declared it to be the Testator’s last will and testament and was signed by the Testator or by another at the direction of the Testator **at Des Moines, in the County of Polk, State of Iowa**, on the date shown in the instrument, and in the presence of each other as subscribing witnesses; that we, as witnesses, declare to the undersigned authority that in our presence the testator executed and acknowledged such will as the testator’s will and that we, in the testator’s presence, at the testator’s request, and in the presence of each other, did subscribe our names thereto as attesting witnesses on the date of such will; and that the witnesses were sixteen years of age or older.

\_\_\_\_\_  
Thurston Howell III

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

Subscribed and sworn and acknowledged before me by THURSTON HOWELL III, the Testator, and subscribed and sworn to before me by \_\_\_\_\_ and \_\_\_\_\_, witnesses, this \_\_\_ day of \_\_\_\_\_, 2016.

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Notary Public in and for the State of Iowa



**MEMORANDUM FOR DISTRIBUTION OF  
TANGIBLE PERSONAL PROPERTY OF  
THURSTON HOWELL III**

To My Executor and/or Trustee:

This memorandum provides for the particular disposition of all or part of my tangible personal property. I direct my Executor or Trustee to take possession of the property listed as nominee only, and to deliver such property to the following designated persons as soon as practical after my death.

	Name of Person	Description of Property	Location	Initials & Date
1.	_____	_____	_____	_____
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____
7.	_____	_____	_____	_____
8.	_____	_____	_____	_____
9.	_____	_____	_____	_____
10.	_____	_____	_____	_____
11.	_____	_____	_____	_____
12.	_____	_____	_____	_____

\_\_\_\_\_  
THURSTON HOWELL III

### SUMMARY OF THE WILL OF THURSTON HOWELL III

Article Two gives all tangible personal property to your wife if she survives you and to your children who are identified in Article One if she does not. Tangible personal property includes all property that can be touched that is not real estate or property attached to real estate. If you want to change the beneficiaries of your personal property, the third paragraph provides the option to specifically designate beneficiaries to take specified personal property by making a list, signing it, dating it, and placing it with your will or in another place it will be found after your death.

Article Three gives your wife your residence provided she outlives you.

Article Four establishes a trust called the Thurston Howell III Marital Trust. The sole purpose of this Trust is to keep your estate from paying federal estate taxes if your wife outlives you. If your wife does not survive you the Marital Trust is never funded.

Generally, the complicated language in Article Four provides that the assets of your estate exceeding the amount that can be given free of estate tax (this year, \$5,450,000) will go into the Marital Trust for the benefit of your wife. At your wife's death, any remaining assets in the Trust are transferred to the Family Trust established in Article Five. During the rest of your wife's life, your wife gets all the income from the Marital Trust and any principal of the Trust at the discretion of the Trustee.

Article Five sets forth who takes the residue of your estate and how it will be distributed. In general, if your wife survives you, the amount that can pass free of tax will go into a trust, called the Thurston Howell III Family Trust. Currently, \$5,450,000 of your assets will go into the Family Trust for the ultimate benefit of your children. Your assets above \$5,450,000 go into the Marital Trust for the benefit of your wife.

The combination of these two trusts, the Family and Marital Trusts, will provide no estate tax due as a result of your death so long as your wife survives you. If your wife does not survive you, then all your assets go into the Family Trust and an estate tax will be assessed on assets that exceed approximately \$5,450,000.

Your Family Trust pays discretionary amounts of income and principal to your wife for her life, and your descendants. On the death of both you and your wife, the combined Marital and Family Trusts will be divided into separate shares, one for each child then living. If a child is deceased with living descendants, that child's share shall be paid to your descendants. Shares for children will remain in trust for the benefit of the child, and distributed as the child reaches the ages of 50, 55 and 60. If a child of yours dies before full distribution, that child's share is set aside for that child's children (your grandchildren). If a child leaves no children, then his or her share is added to your other children's share. If you have no descendants living at the time the Trust is to distribute all its assets, the Trust assets are distributed pursuant to Article Six.

Article Six sets forth the distribution provisions for under age beneficiaries. Generally, a minor beneficiary's share stays in trust until such beneficiary turns 21 years old. The second paragraph provides that any discretionary distributions made by your Trustees will not count toward such child's share when the Trust terminates. The last paragraph provides who would share in your estate in the unlikely event that no other beneficiary would be available to take under your will.

Article Seven provides that your estate will pay all estate and inheritance taxes.

Article Eight gives the Trustee all the powers allowed by the Iowa Code and the power to sell real estate of the trust without court permission. Article Eight also mandates the Trustee to expend funds "reasonably necessary" to make additions or improvements to the residence of the custodian of any of your minor children.

Article Nine is a spendthrift provision which prevents your children from assigning their interest in the trust and also prevents any of your children's creditors from levying on the trust property.

Article Ten sets forth some conditions on the authority of your Trustee. Generally, the first paragraph provides that your Trustee does not have to carry around certified letters of appointment as trustee to prove to all persons with whom he or she deals that he or she is actually the Trustee. The second paragraph exempts your Trustee from making annual reports to the court. This provision takes away any court oversight of your Trust. Although this provision lowers the cost of administration of your trust from year-to-year, it also removes any checks on your Trustee as well. To mitigate this concern, the last paragraph requires the Trustee to make an accounting at the request of a beneficiary. Iowa law currently requires that an individual trustee report to the court upon the termination of a trust.

Article Eleven provides that the executor of your estate may sign on your behalf a final joint income tax or gift tax return. Any income tax refunds will go to your wife. The remainder of Article Eleven sets forth specific responsibilities of the executor.

Article Eleven also provides that if under the terms of the Trust, a beneficiary would get an amount outright, it is not necessary to go through the Trust. This means that, for example, if on the death of the survivor of you and your wife, a child is already over the age that he or she would take distribution, the Executor can distribute the share directly to him or her.

Article Twelve recommends to the court that Gilligan and Ginger be appointed as custodian of any minor children of yours. This is not binding on the court; the court will always look to the best interest of the child, but your designation is given considerable weight.

Article Thirteen appoints your wife as the executor of your estate with The Professor and Mary Ann as alternate executor. Article Thirteen also provides an expedited process to approve certain acts of the trustee by allowing a parent, guardian or conservator to give their consent on behalf of a beneficiary with a legal disability (*i.e.* a minor). Ordinarily, a guardian ad litem would need to be appointed to speak for the benefit of a beneficiary with a legal disability.

Sample of Drug Testing Provision:

**ARTICLE VII**

Any property, whether tangible personal property, income or principal, which is to be distributed from any trust established by this will shall be subject to the provisions of this Article:

1. Drug Testing. It is my belief that by making distributions to a beneficiary contingent on the beneficiary passing drug tests required by the Trustee that I will be promoting the health and well-being of the beneficiary. Upon notice from the Trustee, a beneficiary shall submit to drug tests at a laboratory selected or approved by the Trustee. If possible, the Trustee shall select a laboratory which is certified by the National Institute of Drug Abuse ("NIDA"). If it is not practical to use a laboratory with NIDA certification, then the selection of the laboratory shall be at the discretion of the Trustee. The tests shall be performed as described below:

a. At the discretion of the Trustee, the Trustee may at any time require that a beneficiary submit to a drug test. Additional tests may also be ordered at the discretion of the Trustee. The dates on which the tests are to be performed, the conditions under which the tests are to be performed, and the selection of the testing laboratory shall be at the discretion of the Trustee but shall be reasonable as to the number of tests. The Trustee shall require that the taking of the test specimens be observed by an employee of the testing laboratory.

b. The Trustee shall notify the beneficiary each time a test is to be performed. Notice shall be given in such a form that the time of delivery may be verified. The beneficiary shall not receive other advance notice of the test date and time. The beneficiary shall have twelve (12) hours from the time of receiving notification to report to the designated laboratory for testing. The beneficiary shall be required to keep the Trustee informed of the beneficiary's current address, telephone number and place of employment. The beneficiary shall notify the Trustee if the beneficiary is to be away from the beneficiary's residence for one week or more. If, after three attempts, the Trustee is unable to locate the beneficiary so as to serve the beneficiary with notice of the test, the beneficiary shall be treated as if a beneficiary failed the test. The provisions under paragraph(3) shall then apply.

c. The beneficiary shall sign a consent form (similar to the one attached hereto as Exhibit A) allowing the drug tests to be performed and consenting to the release of the results of the drug tests to the Trustee. If the beneficiary refuses to sign a consent form, the action shall be treated as if the beneficiary failed the test. The provisions under paragraph (3) shall then apply.

d. The drugs tested for shall include but not be limited to marijuana, cocaine, opiates, phencyclidine (PCP), amphetamines, barbiturates, Valium, and Darvon.

e. A confirmation test using gas chromatography mass spectrometry (GCMS) or other more accurate procedure shall also be performed.

f. The Trustee shall obtain written proof of the test results directly from the laboratory performing the tests. The Trustee shall have the laboratory give written confirmation of the time and date on which the test was performed. A copy of the test results shall be furnished to the beneficiary.

g. The cost of the tests shall be borne by the share of the Trust Estate

being administered for the beneficiary.

h. The beneficiary shall have the right to have the same tests performed using a portion of the same specimen at another laboratory which has been approved by the Trustee. In such an event, the Trustee shall direct the transporting of the specimen from the first laboratory to the second laboratory. The expense of such tests shall be borne by the beneficiary. If the two test results conflict, both results shall be disregarded. Neither test shall be counted as one of the three tests required to be performed annually.

2. Successful Completion of Tests. If the beneficiary has complied with the conditions of testing and if the results of the tests performed reveal no presence of drugs, the Trustee shall continue distributions to the beneficiary in accordance with the terms of the share of the Trust Estate being administered for the beneficiary.

3. Failure of Test. If the beneficiary fails to comply with any of the conditions described herein or if the results of any test reveal the presence of drugs, the beneficiary shall be barred from receiving any distribution from the trust except as provided in paragraph (4). Unless the beneficiary complies with the provisions of paragraph (4) within the six (6) month period specified in paragraph (4), the beneficiary's entire share shall immediately be distributed as if the beneficiary had died intestate on the date of the drug test, subject to the provisions below regarding postponement of distribution and subject also to the provision that if an amount becomes payable to a person for whom a share is then being held in trust hereunder, such amount shall be added to that share.

4. Voluntary Rehabilitation. The first time the results of a test reveal the presence of drugs, the beneficiary may elect to enter a drug rehabilitation program. This provision shall not apply to test results which are negated under paragraph (1)(h). The election to enter rehabilitation may be made only once and must be made within six (6) months from the date on which the Trustee mailed the test results to the beneficiary. The selection of a drug rehabilitation program must be approved by the Trustee. The cost of the program shall be paid from the share of the Trust Estate being administered for the beneficiary. During the rehabilitation period, no distributions shall be made directly to the beneficiary. If the beneficiary successfully completes the drug rehabilitation program within its specified time period, the beneficiary shall be given the opportunity to qualify for distributions from the share of the Trust Estate being administered for the beneficiary under the provisions of paragraphs (1)(a)-(h), (2), and (3) by taking additional drug tests as specified by the Trustee. No distributions shall be made directly to the beneficiary until twelve (12) months from the completion of rehabilitation has lapsed. Any distributions of income suspended under this paragraph shall be added to principal. The beneficiary shall remain subject to the provisions of this Article after successfully completing drug rehabilitation.

#### EXHIBIT "A"

#### DRUG TESTING CONSENT FORM

I hereby freely consent to the medical procedures necessary to complete a test for the presence of illegal drugs as designated by the Trustee of the John Doe Revocable Trust. I also freely consent to the release of the test results to the Trustee.

I understand that if I disagree with the results obtained from the chemical testing, a portion of the specimen will be retained for a designated period by the laboratory, and a

portion of this specimen will be made available for further testing at my own expense should I want to challenge the confirmation test results. I understand that the results of the test performed at my expense are not binding upon the Trustee.

I am voluntarily listing below any prescription or non-prescription drugs that I am currently using or have used in the 14 days prior to the drug test.

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\_\_\_\_\_  
Witness

\_\_\_\_\_  
Beneficiary

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**TRUST AGREEMENT  
CREATING THE  
THURSTON HOWELL III  
2016 IRREVOCABLE TRUST**

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This Agreement is executed at Des Moines, Iowa, this 4th day of October, 2016, between THURSTON HOWELL III, the "Trustor," and SAM HOWELL, the "Trustee."

**ARTICLE I**

The beneficiaries of this Trust are my descendants (hereinafter referred to as the "beneficiaries").

**ARTICLE II**

This Agreement is irrevocable. The Trustor shall have no power to amend or modify the provisions of this Agreement.

**ARTICLE III**

The Trustee may receive any other real or personal property from the Trustor or from any other person or persons, by lifetime gift, under a will or trust, or from any other source. If such additional property is acceptable to the Trustee, then such property shall be held and administered by the Trustee subject to the terms of this Agreement.

**ARTICLE IV**

During each calendar year prior to the death of the Trustor, the beneficiaries shall have the right, following any contribution to the trust estate, to make withdrawals from the trust in accordance with the following provisions:

- A. Trustor, or any other person who transfers property to the trust or is deemed to have transferred property to the trust, shall have the power, with respect to the amount of the initial contribution on creation of the trust or the amount of any subsequent addition thereto, to designate, by a writing delivered to the Trustee concurrently with such initial contribution or addition, which members, if any, of the class consisting of the beneficiaries of this trust, shall have the power to make a withdrawal from the trust, to designate the amount each beneficiary may withdraw, and to specify the time limit for such withdrawal.
- B. In the absence of any designation, the beneficiaries shall each have the power to withdraw an amount from the principal of the trust property having a value equal to the value of the property added to the trust

during such year (including, for the year of the trust's creation, the property creating the trust), divided by the number of beneficiaries of the trust; provided, however, that the aggregate amount of withdrawals by any beneficiary during any calendar year from this or any other irrevocable trust established by the Trustor shall not exceed the maximum annual federal gift tax exclusion allowable to the Trustor under Section 2503(b) of the Internal Revenue Code or as it may subsequently be amended.

- C. The rights of withdrawal shall be cumulative. However, no right of withdrawal may be exercised after the death of the beneficiary, and on January 31 of each year, the total amount which may be withdrawn by each beneficiary with respect to all preceding calendar years from this or any other trust created by the Trustor shall be reduced by the sum of \$5,000 or five percent (5%) of the value of the trust estate or estates on that January 31, whichever is greater, or the greater of the sum and percentage set forth in § 2041(b)(2) of the Internal Revenue Code as it may subsequently be amended.
- D. The Trustee shall give written notice within seven (7) days of each contribution to the trust to the beneficiaries authorized to make withdrawals under this Article IV of any contributions to the trust estate and the value of such contributions. Such written notice may be delivered personally by the Trustee or it may be sent in the United States mails, postage prepaid, addressed to such beneficiary at his or her last known address, according to the records of the Trustee.
- E. Any beneficiary who wishes to exercise his or her withdrawal right shall deliver a written request therefor to the Trustee.
- F. The Trustee may satisfy the exercise of any right of withdrawal by distributing to the beneficiary cash or other property. As of the date a request for withdrawal is made pursuant to the provisions of this Article, the beneficiary's right to receive the amount requested shall be vested and shall not be terminated by the subsequent death or disability of the beneficiary or any administrative delay resulting from actions taken by the Trustee to effect distribution of principal pursuant to this Article.
- G. For purposes of this Article, the term "contribution" or "contribution to the Trust estate" shall mean any cash or other assets which are transferred to the Trustee to be held as part of the Trust estate. The amount of any contribution to the Trust estate shall be the value of such contribution for federal gift tax purposes.
- H. For the purpose of this paragraph, any amount which is considered to be a gift received by the Trustee for federal gift tax purposes shall be considered a transfer subject to this paragraph, and the "donor" of a transfer to the Trustee shall be the person considered to be the donor for federal gift tax purposes. Unless a donor directs in writing to the contrary at the time of a transfer to the Trustee, it shall be presumed that the donor and the donor's spouse have not consented to have the



gift considered as made one half by each of them in accordance with Section 2513 of the Internal Revenue Code.

#### ARTICLE V

During Trustor's lifetime, THE SKIPPER may appoint the entire principal and accumulated income of the Trust as provided in this Article. The power may be exercised at any time during his lifetime by a written instrument delivered to the Trustee. THE SKIPPER may appoint the principal of the Trust to any persons or entities other than himself, his estate, his creditors, or the creditors of his estate, in such amounts and proportions, and for such estates and interests, on such terms and conditions, either outright or in trust, as he may elect. However, this limited power of appointment may not be exercised in a manner which would serve to discharge THE SKIPPER's legal obligations, or would otherwise inure to his pecuniary benefit. In the event THE SKIPPER is unable to exercise this special power of appointment, BOB SMITH shall have the right to exercise such special power of appointment under the same terms and conditions.

[Note: This provision is intended to make this irrevocable trust somewhat revocable. The special power holder is expected to comply with the wishes of the Trustor in this regard. However, the trustor should be cautious in choosing this person as he or she has independent discretion as to who, when and how much of the trust corpus is distributed.

This person could be the Trustor's spouse or any close relative (however, note the grantor trust rules, discussed below). The Trustor should not hold the Special Power because this would cause the trust assets to be brought back into the Trustor's estate for estate tax purposes. Also, the beneficiary should not be the power holder because any exercise of the power would be considered a taxable gift (assuming it exceeded the annual gift tax exclusion). Also, the Trustee should not be the Special Power Holder. In 1999, the legislature enacted the Iowa Trust Code which contains Section 633.2303. Such section says that a creditor can reach all trust assets that the trustee has authority to pay to the settlor. This could be interpreted to be the entire trust estate if the special power holder is also the trustee.

In addition, it may cause the trust corpus to be taxed to the settlor for estate tax purposes. According to section 2036 of the Internal Revenue Code, the assets of a trust that can be reached by the creditors of a settlor under state law are included in the taxable estate of the settlor. This means that if the trustee has discretion to pay the trust assets back to the settlor under this special power of appointment, then under Iowa Code Section 633.2303, creditors of the settlor can attach the assets of the trust and the trust assets are taxable in the settlor's estate. See *Outwin v. Comr.*, 76 T.C. 153 (1981); Rev. Rul. 77-378; BNA Tax Management Portfolio, 50-5th, pages A-23 and A-73 (2003).

If the power holder is the grantor's spouse, a close relative or subordinate, the trust will be taxed as a grantor trust. See IRC Sec.s 672, 674 & 675.]

## ARTICLE VI

During Trustor's lifetime, the Trustee may pay (or not pay) to or apply for the benefit of Trustor's wife and the beneficiaries such amounts from the income or principal of this Trust as the Trustee in his discretion deems necessary for their maintenance in health and reasonable comfort and their education. Any such payments need not be equal between or among Trustor's wife and any of the beneficiaries.

## ARTICLE VII

Upon the death of the Trustor the Trustee shall administer the remainder of the trust as follows:

A. If the Trustor's wife at the time of Trustor's death survives him, then during her lifetime the Trustee may pay (or not pay) to or apply for the benefit of his wife and his descendants such amounts from the income or principal of this Trust as the Trustee in his discretion deems necessary for their maintenance in health and reasonable comfort and their education. Any such payments need not be equal between or among his wife and descendants, either as individuals or as separate groups.

B. On the death of the Trustor's wife, or on his death if she predeceases him, the remainder of the THURSTON HOWELL III 2016 IRREVOCABLE TRUST shall be held and distributed as follows:

1. The Trustee shall divide the Trust into separate shares of equal value, creating one such separate share for each of Trustor's children who may then be living and one such separate share for the descendants, collectively, of each child of Trustor who may then be deceased, leaving one or more descendants then living.

2. The Trustee shall promptly pay and distribute each separate share thus created for the descendants of a deceased child to such descendants, per stirpes, subject to the provisions below regarding postponement of distribution. A share created for a child of Trustor shall be held and distributed as follows:

a. Until such child attains the age of sixty (60) years, the Trustee may pay to him or her such amounts of the income or principal of the share as the Trustee deems appropriate for his or her maintenance in health and reasonable comfort or education.

b. When such child attains the age of fifty (50) years, the Trustee shall distribute to him or her one-third (1/3rd) of the share as then constituted; when such child attains the age of fifty-five (55) years, the Trustee shall distributed to him or her one-half (1/2) of the share as then constituted; and when such child attains the age of sixty (60) years, the Trustee shall distribute to him or her the entire remaining amount of the share. If, at the time of the division of this trust into shares, such child has already attained the age of fifty (50), fifty-five (55) or sixty (60), the Trustee shall distribute to him or her one-third (1/3rd), two-thirds (2/3rds) or all of the share, as the case may be.

c. If a child of Trustor should die prior to complete distribution of his or her share, the Trustee shall pay the remaining amount of the share to such child's then living descendants, per stirpes, or if none, to the Trustor's then living

descendants, per stirpes, subject to the provisions below regarding postponement of distribution and subject also to the provision that if an amount becomes payable to a person for whom a share is then being held in trust hereunder, such amount shall be added to that share.

#### **ARTICLE VIII**

The following provisions shall apply to all beneficiaries hereunder:

A. Should any portion of any trust created hereby become distributable to a person who has not reached the age of twenty-one (21) years, it shall immediately vest in such person, but the Trustee shall (1) establish therewith a custodianship for the person under the Uniform Transfers to Minors Act, or (2) retain possession of such portion as a separate trust until the person reaches the age of twenty-one (21) years, meanwhile paying to or applying for the benefit of such person so much of the income and principal of such portion as the Trustee deems necessary or advisable to provide for his or her maintenance in health and reasonable comfort and education, and adding to principal any income not so paid.

B. Discretionary distributions shall not be treated as advancements to the distributees. If the Trustee deems it advisable to advance principal to a beneficiary, the Trustee may lend such amount or amounts to such beneficiary on such terms and for such term as the Trustee deems advisable. If the total amount so lent exceeds the amount which such beneficiary is entitled to receive ultimately, the Trustee may treat such excess as a distribution and need not attempt its collection.

C. The Trustee on the death of an income beneficiary shall pay first from undistributed income and if that be not sufficient from principal (1) any accrued taxes, expenses or compensation which are proper, and (2) expenses of last illness and burial of the deceased income beneficiary. The balance of income accrued or collected but not distributed or otherwise disbursed at the death of any income beneficiary shall be payable as income to the beneficiaries entitled to the next estate or interest.

D. If at any time before final distribution of any trust created hereunder there is not in existence anyone who is or might become entitled to receive benefits under the provisions of this trust, any portion of the trust estate then remaining shall be divided into equal shares and shall be distributed to the Trustor's heirs-at-law in the proportions determined as though the Trustor had then died intestate, resident of the State of Iowa, but in accordance with the laws of the State of Iowa now in effect relating to the descent of property of intestate decedents.

#### **ARTICLE IX**

Neither the income nor the principal of any interest created herein shall be alienable by any beneficiary, either by assignment or by any other method, and the same shall not be subject to be taken by his or her creditors by any process whatsoever. However, this provision shall not restrict a beneficiary's right to disclaim any interest herein created.

**ARTICLE X**

The Trustee shall have all powers necessary for the proper administration of the Trust created by this Agreement which shall be in addition to those powers provided by the Iowa Probate Code and Iowa Trust Code. In extension but not in limitation of any power otherwise possessed by the Trustee, the Trustor grants to him without the necessity of notice to or approval of any court or person, the following powers:

- A. To sell, exchange, borrow, mortgage, lease or otherwise dispose of any asset for terms within or extending beyond the term of any trust.
- B. To determine what is principal and what is income of any trust and in his discretion to allocate or apportion receipts and disbursements between principal and income, except that all dividends paid in stock shall be considered principal.
- C. To delegate any of the powers granted in this Agreement, except those relating to discretionary distribution of income or principal, without liability for such delegation, and to employ agents.
- D. To borrow money for any purpose from any bank, person or lending agency, and to secure the loan or loans by a pledge or mortgage of the assets of the Trust.
- E. To operate, maintain, alter, improve or otherwise manage all property held as a part of the Trust and to invest and reinvest the Trust estate in property or undivided interests in property of any type or description without being limited by any statute or rule of law concerning investments by the Trustee.
- F. To borrow or lend money; to sell, transfer, and convey; to let or lease for any term, to mortgage, pledge or exchange for any purpose, or otherwise to dispose of, and generally to deal with, any property, at such time or times, and on such term or conditions, in such manner, and from or to such persons (including the Trustee when acting in his individual capacity and when acting in a fiduciary capacity) as the Trustee shall determine.
- G. To make any distribution or division of the Trust estate in cash or in kind or both, and to determine the value of any such property.
- H. To execute deeds, transfers, leases, contracts and other instruments of any kind.
- I. After the Trustor's death, to combine any trust created herein with any other trust created by the Trustor that has substantially the same provisions. Under no circumstances, however, shall a trust exempt from generation-skipping tax be combined with one that is not exempt.

- J. To hold assets of separate trusts or shares as a single fund for management and investment without the need of physical segregation, dividing the income proportionately among them. Segregation of the various trusts or shares need only be made on the books of the Trustee for accounting purposes.

#### **ARTICLE XI**

If SAM HOWELL is unable or unwilling to serve as Trustee hereunder, then MICHELLE HOWELL of New York, New York, shall serve as successor Trustee.

A Trustee serving hereunder shall be deemed to have resigned or be unable to serve if (1) he executes a written resignation or (2) a physician who has been consulted concerning a noncorporate Trustee's physical or mental health certifies in writing that, in his or her opinion, the Trustee is no longer capable, by reason of either a physical or mental condition, of competently handling financial affairs or that the Trustee's ability to do so has become substantially impaired or, in the case of a noncorporate trustee. The Trust shall indemnify and hold the physician harmless from any claims asserted against the physician by reason of making such certification.

The Trustee shall not be required to qualify or file reports, either interim or final, with any court; provided, however, that the Trustee or any beneficiary may invoke the jurisdiction of any proper court at any time it is deemed advisable. The Trustee shall, at least annually, make an accounting to all beneficiaries, and the approval by a beneficiary, or his or her parent, legal guardian or conservator, shall release and relieve the Trustee from any further responsibility or liability with respect to that beneficiary, and his or her heirs and assigns, for their actions during the period covered by the accounting.

#### **ARTICLE XII**

No Trustee named herein shall be required to give a bond.

#### **ARTICLE XIII**

All questions of law arising under this Agreement shall be determined in accordance with laws of the State of Iowa.

#### **ARTICLE XIV**

This is an Iowa Trust, made and accepted by the Trustee in that state, and to be governed, construed and administered according to its laws, and it shall continue to be so although conducted or administered elsewhere within the United States.

#### **ARTICLE XV**

A. When under any provision of this trust, corpus becomes distributable "per stirpes" to the descendants of any designated person, such corpus shall be divided among and distributed to such descendants as follows: The corpus shall be divided into as many equal shares as there shall be children of such designated person then living and children of such designated person who shall not then be living but who shall have died

leaving issue who shall then be living. No share shall be set aside for any deceased child of such designated person who shall have died leaving no surviving issue.

Following such division, one such share shall then be distributed to each such surviving child and one share shall be distributed among the issue of such deceased child. The issue of any deceased child shall take that subshare in such share equal to what such issue would have taken therein if such share had been the corpus of this trust and such deceased child had been such designated person.

For purposes of this provision, the term child or children shall include an adopted child or children.

B. Wherever in this trust the meaning so dictates, all references to the singular shall include the plural, all references to the plural shall likewise include the singular, and all references to any particular gender shall include either or both as well as the neuter.

IN WITNESS WHEREOF, the Trustor and the Trustee have executed this Trust Agreement on the date first set forth above.

\_\_\_\_\_  
THURSTON HOWELL III, Trustor

\_\_\_\_\_  
SAM HOWELL, Trustee

STATE OF IOWA            )  
                                  ) ss:  
COUNTY OF POLK        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me, a Notary Public, personally appeared THURSTON HOWELL III, the Trustor named in and who executed the foregoing instrument and acknowledged that he executed the same as his voluntary act and deed.

\_\_\_\_\_  
Notary Public in and for the  
State of Iowa.

**NOTICE REGARDING THE  
THURSTON HOWELL III  
2016 IRREVOCABLE TRUST**

Pursuant to the provisions of such Trust, you as a beneficiary have the right to demand a withdrawal of \$\_\_\_\_\_ from the Trust under the terms and conditions thereof. If you do not withdraw this amount by January 31<sup>st</sup> of next year, your right to withdraw will lapse, either partially or in full.

To exercise your right of withdrawal, please respond in writing to the undersigned Trustee, at the address below. Any questions you have about this right of withdrawal or its exercise should be directed to the undersigned Trustee.

Please acknowledge receipt of this notice by signing the copy and returning it in the enclosed envelope.

\_\_\_\_\_  
date

\_\_\_\_\_  
SAM HOWELL, Trustee

ADDRESS:

\_\_\_\_\_ I acknowledge receipt of this notice:

\_\_\_\_\_ \_\_\_\_\_  
date

**DECLARATION RELATING TO USE OF LIFE-SUSTAINING PROCEDURES  
(Living Will)  
AND  
DURABLE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS  
(Medical Power of Attorney)**

**I. DECLARATION RELATING TO LIFE-SUSTAINING PROCEDURES**

If I should have an incurable or irreversible condition that will result either in death within a relatively short period of time or a state of permanent unconsciousness from which, to a reasonable degree of medical certainty, there can be no recovery, it is my desire that my life not be prolonged by the administration of life-sustaining procedures. If I am unable to participate in my health care decisions, I direct my attending physician to withhold or withdraw life-sustaining procedures that merely prolong the dying process and are not necessary to my comfort or freedom from pain.

This declaration is subject to any specific instructions or statement of desires I have added in "Additional Provisions" below.

**II. POWER OF ATTORNEY FOR HEALTH CARE DECISIONS**

I hereby designate my wife, Lovey Howell, as my attorney-in-fact (my agent) and give to my agent the power to make health care decisions for me. This power exists only when I am unable, in the judgment of my attending physician, to make those health care decisions. The attorney-in-fact must act consistently with my desires as stated in this document or otherwise made known.

Except as otherwise specified in this document, this document gives my agent the power, where otherwise consistent with the laws of the State of Iowa, to consent to my physician not giving health care or stopping health care which is necessary to keep me alive.

This document gives my agent power to make health care decisions on my behalf, including to consent, to refuse to consent, or to withdraw consent to any care, treatment, service or procedure to maintain, diagnose or treat a physical or mental condition. This power is subject to any statement of my desires and any limitations included in this document. My agent has the right to examine my medical records and to consent to disclosure of such records.

If the person designated as agent above is unable to serve, I designate the following person to serve instead: SAM HOWELL, New York, New York.

**III. ADDITIONAL PROVISIONS (including any statement of desires or limitations on my agent):**



Signed this \_\_\_\_ day of \_\_\_\_\_, 2016.

---

THURSTON HOWELL III (Declarant/Principal)  
1234 Ivy Place  
Minburn, Iowa 50167

**IMPORTANT NOTE: THIS DOCUMENT MUST BE SIGNED BEFORE A NOTARY PUBLIC OR TWO WITNESSES. SEE NEXT PAGE FOR NOTARY OR WITNESS FORMS. IF YOU WANT TO EXECUTE EITHER A LIVING WILL DECLARATION OR A MEDICAL POWER OF ATTORNEY, BUT NOT BOTH, SEPARATE FORMS ARE AVAILABLE FROM THE IOWA STATE BAR ASSOCIATION. IF YOU HAVE QUESTIONS REGARDING THIS FORM OR NEED ASSISTANCE TO COMPLETE IT, YOU SHOULD CONSULT AN ATTORNEY.**

**NOTARY PUBLIC FORM**

STATE OF IOWA, COUNTY OF POLK, SS:

On this \_\_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned, a Notary Public in and for said state, personally appeared **THURSTON HOWELL III**, to me known to be the person named in and who executed the foregoing instrument and acknowledged that he executed the same as his voluntary act and deed.

\_\_\_\_\_  
Notary Public in and for the State of Iowa

**WITNESS FORM**

We, the undersigned, hereby state that we signed this document in the presence of each other and the Declarant/Principal and we witnessed the signing of the document by the Declarant/Principal or by another person acting on behalf of the Declarant/Principal at the direction of the Declarant/Principal; that neither of us is appointed as attorney in fact by this document; that neither of us are health care providers who are presently treating the Declarant/Principal, or employees of such a health care provider. We further state that we are both at least 18 years of age, and that at least one of us is not related to the Declarant/Principal by blood, marriage or adoption.

\_\_\_\_\_  
Signature of 1st Witness

\_\_\_\_\_  
Signature of 2nd Witness

\_\_\_\_\_  
(Type or Print Name of Witness)

\_\_\_\_\_  
(Type or Print Name of Witness)

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City State Zip Code

\_\_\_\_\_  
City State Zip Code

**GENERAL INFORMATION REGARDING THIS DOCUMENT**

1. "Health care" means any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition. "Life-sustaining procedure" means any medical procedure, treatment, or intervention which utilizes mechanical or artificial means to sustain, restore, or supplement a spontaneous vital function, and when applied to a person in a terminal condition, would serve only to prolong the dying process. "Life sustaining procedure" does not include administration of medication or performance of any medical procedure deemed necessary to provide comfort care or to alleviate pain.
2. The terms "health care" and "life-sustaining procedure" include nutrition and hydration (food and water) only when provided parenterally or through intubation (intravenously or by feeding tube). Thus, this document authorizes withholding nutrition or hydration that is provided intravenously or by feeding tube. If this is not what you want, you should set forth your specific instructions in the space provided on page 1.
3. The following individuals shall not be designated as the attorney in fact to make health care decisions under a durable power of attorney for health care:
  - a. a health care provider attending the principal on the date of execution;
  - b. an employee of such a health care provider unless the individual to be designated is related to the principal by blood, marriage, or adoption within the third degree of consanguinity.
4. The power of attorney for health care decisions or the declaration relating to use of life-sustaining procedures may be revoked at any time and in any manner by which the principal/declarant is able to communicate the intent to revoke, without regard to mental or physical condition. A revocation is only effective as to the attending health care provider upon its communication to the provider by the principal/declarant or by another to whom the principal/declarant has communicated the revocation.
5. It is the responsibility of the principal/declarant to provide the attending health care provider with a copy of this document.

6. A declaration relating to use of life-sustaining procedures will be given effect only when the declarant's condition is determined to be terminal or the declarant is in a state of permanent unconsciousness, and the declarant is not able to make treatment decisions.

7. **NOTE: The Health Care Power of Attorney is specifically authorized by the Uniform Anatomical Gift Act codified in Chapter 142C of the Iowa Code to make anatomical gifts of the Principal's organs and other body parts after the death of the Principal.**

SUGGESTIONS AFTER FORM IS PROPERLY SIGNED, WITNESSED OR NOTARIZED

1. Place original in a safe place known and accessible to family members or close friends.
2. Provide a copy to your doctor.
3. Provide a copy(s) to family member(s).
4. Provide a copy to the designated attorney-in-fact (agent) and to alternate designated attorney-in-fact (if any).

**AUTHORIZATION FOR RELEASE OF PROTECTED  
HEALTH INFORMATION  
TO NOMINATED HEALTH CARE ATTORNEY-IN-FACT**

Pursuant to the terms of a Durable Power of Attorney, Health Care Decisions, (or Combined Living Will and Medical Power of Attorney) (HCPOA) dated \_\_\_\_\_, 2016, in which the undersigned is the grantor, the power becomes effective in the event of my disability or incapacity.

**AUTHORIZATION TO RELEASE INFORMATION:**

I authorize any physician, health care professional, dentist, health plan, hospital, clinic, laboratory, pharmacy, or other covered health care provider, any insurance company and the Medical Information Bureau, Inc., or other health care clearinghouse that has provided treatment or services to me or that has paid for or is seeking payment from me for such services, to give, disclose, and release to the person or persons designated in this document to act as my agent such of my individually identifiable health information and medical records regarding any past, present or future medical or mental health condition (including all specially protected health information relating to each of the following conditions specifically authorized by me to be disclosed by marking the box with an "X" or a check mark:

- Sexually transmitted diseases, acquired immunodeficiency syndrome (AIDS), and human immunodeficiency virus (HIV);
- Behavioral and mental health; and
- Alcohol, drug or other substance abuse)

relating to my ability to make health care decisions. The purpose of this request is to assist in determining whether the person designated to act as my agent should act as my agent. This authorization expires when I die or when revoked by me by a written revocation signed by me and delivered to the entity from which information is being requested prior to the time information is being requested.

I understand I can revoke this authorization by delivering a written statement of revocation to any entity I have authorized to give, disclose and release information. The revocation is effective only as to those entities to whom the written statement revocation is given and only after the time of delivery. I also understand that I have the right to inspect the disclosed information at any time. My treatment, payment, enrollment or eligibility for benefits with an entity that I have authorized to release information is not conditioned on my signing this authorization. I know that once the information I have authorized to be released is released it is subject to re-disclosure by the recipient and is no longer protected by the Health Insurance Portability and Accountability Act of 1996 and regulations promulgated pursuant thereto, as amended from time to time.

**THE AUTHORITY TO ACT AS PERSONAL REPRESENTATIVE**

In addition to the other powers granted by the HCPOA, I grant to my agent the power and authority to serve as my personal representative for all purposes of the Health Insurance Portability and Accountability Act of 1996, as amended from time to time, and its regulations (HIPAA) during any time that my agent (hereinafter referred to in subsequent clauses of this paragraph as my "HIPAA personal representative") is exercising authority under this document.

Pursuant to HIPAA, I specifically authorize my HIPAA personal representative to request, receive and review any information regarding my physical or mental health, including without limitation all HIPAA-protected health information, medical and hospital records; to execute on my behalf any authorizations, releases, or other documents that may be required in order to obtain this information and to consent to the disclosure of this information. I further authorize my HIPAA personal representative to execute on my behalf any documents necessary or desirable to implement the health care decisions that my HIPAA personal representative is authorized to make under the HCPOA.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2016.

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Thurston Howell III, Grantor

**Declaration of Designee for Final Disposition**

I hereby designate my wife, Lovey, as my designee. My designee shall have the sole responsibility for making decisions concerning the final disposition of my remains and the ceremonies to be performed after my death. This declaration hereby revokes all prior declarations. This designation becomes effective upon my death. My designee shall act in a manner that is reasonable under the circumstances.

I may revoke or amend this declaration at any time. I agree that a third party (such as a funeral or cremation establishment, funeral director, or cemetery) who receives a copy of this declaration may act in reliance upon it. Revocation of this declaration is not effective as to a third party until the third party receives notice of the revocation. My estate shall indemnify my designee and any third party for costs incurred by them or claims arising against them as a result of their good faith reliance on this declaration.

If the person designated above is unable or unwilling to serve, I designate the following person to serve instead: the Professor, Petersburg, Virginia.

I have entered into a contract for prearranged funeral services or funeral merchandise as defined in and excepted under Iowa Code Chapter 523A. The contract may be found at my residence at 512 Oak Street, Perry, Iowa. I own or have reserved a cemetery lot at Violet Hill Cemetary, Perry, Iowa.

I execute this declaration as my free and voluntary act.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Thurston Howell III (Declarant/Principal)  
512 Oak Street, Suite 100  
Perry, Iowa 50220

IMPORTANT NOTE: THIS DOCUMENT MUST BE SIGNED BEFORE A NOTARY PUBLIC OR TWO WITNESSES. YOU MUST ATTACH THIS FORM TO A DURABLE HEALTH CARE POWER OF ATTORNEY FOR IT TO BE EFFECTIVE. IOWA LAW DOES NOT ALLOW YOU TO USE THIS DOCUMENT TO GIVE YOUR DESIGNEE SPECIFIC INSTRUCTIONS ON WHAT TYPE OF FUNERAL, CREMATION, BURIAL, OR CEREMONY YOU MAY WANT. THEREFORE, IT IS IMPORTANT THAT YOU WRITE THESE WISHES OUT SEPARATELY AND BE SURE TO SHARE THEM WITH YOU DESIGNEE.

**NOTARY PUBLIC FORM**

STATE OF IOWA, COUNTY OF POLK, SS:

On this \_\_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned, a Notary Public in and for said state, personally appeared **Thurston Howell, III**, to me known to be the person named in and who executed the foregoing instrument and acknowledged that she executed the same as her voluntary act and deed.

\_\_\_\_\_  
Notary Public in and for the State of Iowa

**WITNESS FORM**

We, the undersigned, hereby state that we signed this document in the presence of each other and the Declarant/Principal and we witnessed the signing of the document by the Declarant/Principal or by another person acting on behalf of the Declarant/Principal at the direction of the Declarant/Principal; that neither of us is appointed as attorney in fact by this document; that neither of us are health care providers who are presently treating the Declarant/Principal, or employees of such a health care provider. We further state that we are both at least 18 years of age, and that at least one of us is not related to the Declarant/Principal by blood, marriage or adoption.

\_\_\_\_\_  
Signature of 1st Witness

\_\_\_\_\_  
(Type or Print Name of Witness)

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City State Zip Code

\_\_\_\_\_  
Signature of 2nd Witness

\_\_\_\_\_  
(Type or Print Name of Witness)

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City State Zip Code

## GENERAL POWER OF ATTORNEY FOR FINANCIAL MATTERS

1. Designation of Agent. I, Thurston Howell III, of Perry, Iowa, appoint my wife, Lovey Howell, my Attorney-in-Fact. In the event my Attorney-in-Fact is unable to serve for any reason or if my Attorney-in-Fact is currently my spouse and we become legally separated or our marriage is dissolved, I name Thurston Howell IV of New York, New York, as successor to my Attorney-in-Fact. A person that I have nominated to serve as my Attorney-in-Fact shall be referred to herein as my "Agent." If it becomes necessary for a court to appoint a conservator of my estate, I nominate my Agent, in the order as set forth above, as such conservator.

I hereby revoke any and all general or plenary powers of attorney that may have been previously executed by me, but specifically excepting any powers of attorney for health care decisions and further excepting any powers of attorney limited to a specific and identifiable action or transaction which transaction is still capable of performance but has not yet been fully accomplished by the Agent. Any person, including my Agent, may rely upon the validity of this power of attorney or a copy of it unless that person knows it has terminated or is invalid.

2. Powers of Agent. I grant my Agent and any successor Agent general authority to act for me with respect to the following subjects in the left column, below, as defined in the Iowa Uniform Power of Attorney Act, Iowa Code chapter 633B, and the authority to do any of the following specific acts described in the right column:

<input checked="" type="checkbox"/> Real Property	<input checked="" type="checkbox"/> Amend, revoke, or terminate a revocable inter vivos trust, if authorized by the trust.
<input checked="" type="checkbox"/> Tangible Personal Property	<input checked="" type="checkbox"/> Agree to the amendment or termination of any other inter vivos trust.
<input checked="" type="checkbox"/> Stocks and Bonds	<input checked="" type="checkbox"/> Exercise fiduciary powers that the principal has authority to delegate.
<input checked="" type="checkbox"/> Commodities and Options	<input checked="" type="checkbox"/> Disclaim or refuse an interest in property, including a power of appointment.
<input checked="" type="checkbox"/> Banks and Other Financial Institutions	<input checked="" type="checkbox"/> Make a gift to an individual who is not an Agent, subject to the limitations of the Iowa Uniform Power of Attorney Act, Iowa Code Section 633B.217, and any special instructions in this power of attorney.
<input checked="" type="checkbox"/> Operation of Entity or Business	<input checked="" type="checkbox"/> My Agent may make gifts to him or herself within the scope of Iowa Code Section 633B.217(3).
<input checked="" type="checkbox"/> Insurance and Annuities	
<input checked="" type="checkbox"/> Estates, Trusts, and Other Beneficial Interests	
<input checked="" type="checkbox"/> Claims and Litigation	
<input checked="" type="checkbox"/> Personal and Family Maintenance	
<input checked="" type="checkbox"/> Benefits from Governmental Programs or Civil or Military Service	
<input checked="" type="checkbox"/> Retirement Plans	
<input checked="" type="checkbox"/> Taxes	

3. Limitations on Agent's Authority. An Agent that is not my ancestor, spouse, or descendant shall not use my property to benefit the Agent or a person to whom the Agent owes an obligation of support unless I have included that authority in the optional Special Instructions.

4. Liability of Agent. My Agent shall not be liable for any loss sustained through an error of judgment made in good faith, but shall be liable for willful misconduct or breach of good faith in the performance of any of the provisions of this power of attorney.

5. Compensation of Agent. The Agent understands that this power of attorney is given without any express or implied promise of compensation to said Agent. Any services performed as my Agent will be done without compensation, either during my lifetime or upon my death, but the Agent shall be entitled to reimbursement for all reasonable expenses incurred as a result of carrying out any provisions of this power of attorney.

6. Accounting by Agent. Upon my request or the request of any conservator appointed on my behalf or the personal representative of my estate, my Agent shall provide a complete accounting as to all acts performed pursuant to this power of attorney.

7. Special Instructions. You may give special instructions on the following lines:

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8. Effective Date and Durability. This Power of Attorney shall become effective upon written certification by my physician that I am disabled or incapacitated, and shall continue effective until my death; provided, however, that this Power of Attorney may be revoked by me as to my Agent at any time by written notice to such Agent. All of my individually identifiable health information and medical records relating to my disability or incapacity may be released to the person who is nominated as my Agent, including any written opinion relating to my disability or incapacity that the person so nominated may have requested. This authorization includes any information governed by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 USC 1320d and 45CFR 160-164 and applies even if this Power of Attorney has not become effective. This authorization shall expire upon revocation or upon my death whichever occurs first.

Dated \_\_\_\_\_, 2016

\_\_\_\_\_  
THURSTON HOWELL III

STATE OF IOWA, POLK COUNTY, SS: On this \_\_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Thurston Howell Iii, to me known to be the identical person named in and who executed the foregoing instrument and acknowledged that he executed the same as his voluntary act and deed.

\_\_\_\_\_  
Notary Public in and for the State of Iowa

**IMPORTANT INFORMATION FOR AGENT** When you accept the authority granted under this power of attorney, a special legal relationship is created between the principal and you. This relationship imposes upon you legal duties that continue until you resign or the power of attorney is terminated or revoked. You must do all of the following:

1. Do what you know the principal reasonably expects you to do with the principal's property or, if you do not know the principal's expectations, act in the principal's best interest.
2. Act in good faith.
3. Do nothing beyond the authority granted in this power of attorney.
4. Disclose your identity as an agent whenever you act for the principal by writing or printing the name of



the principal and signing your own name as agent in the following manner: Thurston Howell III by Lovey Howell as Agent.

5. Unless the Special Instructions in this power of attorney state otherwise, you must also do all of the following:
  - a. Act loyally for the principal's benefit.
  - b. Avoid conflicts that would impair your ability to act in the principal's best interest. Act with care, competence, and diligence.
  - c. Keep a record of all receipts, disbursements, and transactions made on behalf of the principal.
  - d. Cooperate with any person that has authority to make health care decisions for the principal to do what you know the principal reasonably expects or, if you do not know the principal's expectations, to act in the principal's best interest.
  - e. Attempt to preserve the principal's estate plan if you know the plan and preserving the plan is consistent with the principal's best interest.

**TERMINATION OF AGENT'S AUTHORITY** You must stop acting on behalf of the principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. Events that terminate a power of attorney or your authority to act under a power of attorney include any of the following:

1. Death of the principal.
2. The principal's revocation of the power of attorney or your authority.
3. The occurrence of a termination event stated in the power of attorney.
4. The purpose of the power of attorney is fully accomplished.
5. If you are married to the principal, a legal action is filed with a court to end your marriage, or for your legal separation, unless the Special Instructions in this power of attorney state that such an action will not terminate your authority.

The meaning of the authority granted to you is defined in the Iowa Uniform Power of Attorney Act, Iowa Code chapter 633B. If you violate the Iowa Uniform Power of Attorney Act, Iowa Code chapter 633B, or act outside the authority granted, you may be liable for any damages caused by your violation. If there is anything about this document or your duties that you do not understand, you should seek legal advice.

## ANTENUPTIAL AGREEMENT

THIS AGREEMENT is made this \_\_\_ day of \_\_\_\_\_, 2016, by and between Lovey Howell of 1234 Ivy Place, Minburn, Iowa 50167 ("LOVEY") and Thurston Howell III of 1234 Ivey Place, Minburn, Iowa 50167, Iowa ("THURSTON").

### RECITALS:

1. The parties intend to be married.
2. LOVEY is the owner of assets and property set out in Exhibit A attached hereto and signed by the parties, and THURSTON is the owner of the assets and property set out in Exhibit B attached hereto and signed by the parties.

### NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. LOVEY and THURSTON agree that the following property has been and shall be or remain each party's separate property:
  - a. All property shown on each party's list set out in Exhibits C and D attached hereto.
  - b. All property at any time acquired by the party by gift, including gifts from the other party, devise, bequest or inheritance.
  - c. All property acquired by the party during the marriage by means of the rents, appreciation, income or proceeds of the party's separate property or income.
2. LOVEY and THURSTON hereby waive and relinquish all rights of every kind and character to the separate property of the other -- whether such property be real, personal, or mixed and wherever situated -- which each may have under the law by reason of their marriage, and all of the income, rents, appreciation, issues and profits thereof shall be and remain their respective separate property except as set forth herein.
3. LOVEY and THURSTON agree to execute upon the request of the other such deeds, bills of sale and other documents of transfer which may be required by applicable law to permit the other to sell, convey or otherwise transfer property owned by the other. Further, each party agrees that he or she will, upon request, execute whatever documents are necessary to waive his or her rights as spouse under the other's retirement plan. [NOTE: ERISA preempts this provision-to waive rights under retirement plans, the spouses have to waive the rights in writing after the ceremony and file the waiver with the plan administrator. See Hagwood v. Newton No. 01-

1909 (4<sup>th</sup> Cir. Feb. 26, 2002). Also note that a spouse designated as a beneficiary on an ERISA retirement plan is not voided by their subsequent divorce. Kennedy v. DuPont Savings Investment Plan, \_\_\_\_ U.S. \_\_\_\_ (2009) ]

4. LOVEY and THURSTON agree that each party's income from employment or any other sources shall remain that party's separate property, and neither the other party nor the other party's creditors shall have any right to that income, except as set forth herein. During their marriage, the parties agree to either equitably divide their common household and other living expenses or maintain a checking account in joint tenancy for their common household and other living expenses, with both parties authorized to sign checks, into which each party shall periodically deposit such amounts as from time-to-time shall be determined by the parties.
5. Nothing herein shall prevent the parties from acquiring or placing property or assets in both names. If this occurs, there shall be written evidence of the parties' intention that the property is owned by both, except as set forth in paragraph 9, below, regarding certain tangible personal property.
6. Nothing herein shall be construed as limiting THURSTON's or LOVEY's right to make gifts or testamentary provisions to each other. Any property gifted by one party to the other shall be considered the separate property of the grantee; provided, however, that any gift or combination of related gifts having a purchase price or value in excess of Five Thousand Dollars (\$5,000.00) shall be supported by written evidence.
7. Each party waives and releases any right he or she might have to take against the will of the other or to inherit through intestacy any of the other's separate property. Nothing herein shall be construed as limiting either party's ability to dispose of their separately-owned tangible personal property, as that term is defined in §633.276 of the Code of Iowa (2015), in the manner set forth therein or by will.
8. LOVEY and THURSTON agree that in the event of the dissolution of their marriage or the divorce of the parties, or of their legal separation or separate maintenance, they will not assert any claim or interest in the other's separate property. Unless there is clear written evidence showing that the parties intend that they have a non-equal ownership of their commonly or jointly owned property, any commonly or jointly owned property shall be: 1) divided equally between the parties; 2) sold and the proceeds divided equally between the parties; or 3) if the parties agree, one party may buy the other's interest in such property. In addition, neither party will assert any claim or make a request for a support allowance from the other party.
9. It is contemplated that the parties may acquire tangible personal property during the marriage for which there is generally no evidence of title (such as paintings, furniture, recreational equipment and the like). All such mutually acquired tangible personal property shall be presumed to be the commonly or jointly owned property of both, unless they sign a writing to the contrary. Both agree to make the other the beneficiary of such commonly or jointly owned tangible personal property in the event of death.
10. Neither party shall be liable for the debts or obligations of the other, now existing or hereafter incurred, unless assumed in writing; neither party may assign or transfer his or her rights under the Agreement; and no creditor of either party shall have any right to attach, execute or levy upon the interests of the other party hereunder.

11. LOVEY and THURSTON agree that each has been fully advised of the nature and extent of the property and assets now owned by the other and their annual incomes, which assets and income are respectively listed and described in the attached Exhibits A and B, and both assert that the respective exhibits fully disclose their respective assets, property and income. **Attached to Exhibits A and B are the parties income tax returns for the past three years.** [ALTERNATIVE: The parties acknowledge having received and reviewed each other's income tax returns for the past three years.]
12. LOVEY and THURSTON state and agree that prior to the execution of the Agreement, no representations, promises or agreements have been made by either of them to the other, except as are embodied and stated in this Agreement, and that this Agreement embodies the full and complete understanding of the parties with reference to the subject matter.
13. The parties are residents of the State of Iowa, this Agreement is being executed in the State of Iowa, and it is their desire that it be governed by and interpreted in accordance with the laws of the State of Iowa. If, during their married life, the parties should become residents of a state having "community property" laws, or property laws otherwise different from those prevailing in the State of Iowa, the property interests, and the disclaimers of interest in the property of the other, shall nevertheless remain the same as they would have been under the terms and provisions of this Agreement construed in accordance with the laws of the State of Iowa.
14. This Agreement shall be binding on the heirs, assigns and representatives of both parties hereto.
15. If any part of this Agreement is adjudged, for any reason, to be void, invalid, or unenforceable by a court, the remainder of this Agreement shall continue and remain in full force and effect.
16. This Agreement shall not be amended, altered or revoked, in whole or in part, except in a writing signed by both parties.
17. This Agreement becomes effective upon the marriage of the parties.
18. LOVEY and THURSTON expressly acknowledge and declare that this agreement is freely and voluntarily entered into by each party without any pressure or persuasion on the part of the other. LOVEY and THURSTON further acknowledge and declare that having been counseled by his or her own attorney, and having in mind their own financial resources and income, they have made the deliberate judgment that it is fair and equitable that they waive and relinquish, as above provided, any right or claim relating to property against the other party arising out of a dissolution of marriage or divorce or out of a legal separation or separate maintenance. The parties agree that they shall remain bound by the terms of this agreement notwithstanding any decree or judgment of dissolution of marriage or legal separation and this agreement shall not be merged in any such decree or judgment, but shall survive the same, although nothing herein contained shall be construed to prevent this agreement from being incorporated in such decree or judgment by reference. No decree or judgment of dissolution of marriage or legal separation shall affect the terms and provisions of this agreement, and this agreement shall be enforceable separate and apart from and independently of such decree or judgment.

**IN WITNESS WHEREOF**, the parties hereto have set their hands as of the day and

year first above written.

\_\_\_\_\_  
LOVEY HOWELL

\_\_\_\_\_  
THURSTON HOWELL III

STATE OF IOWA        )  
                              ) ss:  
COUNTY OF POLK     )

On this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_, before me, the undersigned, a Notary Public in and for said state, personally appeared LOVEY HOWELL to me known to be the person named in and who executed the foregoing instrument and acknowledged that she executed the same as her voluntary act and deed.

\_\_\_\_\_  
Notary Public in and for the State of Iowa

STATE OF IOWA        )  
                              ) ss:  
COUNTY OF POLK     )

On this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_, before me, the undersigned, a Notary Public in and for said state, personally appeared THURSTON HOWELL III to me known to be the person named in and who executed the foregoing instrument and acknowledged that he executed the same as his voluntary act and deed.

\_\_\_\_\_  
Notary Public in and for the State of Iowa

EXHIBIT A

LOVEY HOWELL's average annual income for past three years:	\$
LOVEY HOWELL's expected annual income for current year:	\$

Property owned by LOVEY HOWELL:

ASSETS:	<u>Value</u>
Pension Plans IRA's	
Securities	
Bonds	
Notes Receivable	
Household Furnishings	
Motor Vehicles	
Real Property	
Miscellaneous	
TOTAL ASSETS	<u>\$0.00</u>
LIABILITIES:	
TOTAL LIABILITIES	<u>\$0.00</u>
NET WORTH:	<u><u>\$0.00</u></u>

\_\_\_\_\_  
Date

\_\_\_\_\_  
LOVEY HOWELL

*I have read and understood this exhibit:*

\_\_\_\_\_  
Date

\_\_\_\_\_  
THURSTON HOWELL III

EXHIBIT B

THURSTON HOWELL III's average annual income for past three years:	\$
THURSTON HOWELL III's expected annual income for current year:	\$

Property owned by THURSTON HOWELL III:

ASSETS:	<u>Value</u>
Pension Plans IRA's	
Securities	
Bonds	
Notes Receivable	
Household Furnishings	
Motor Vehicles	
Real Property	
Miscellaneous	
TOTAL ASSETS	<u>\$0.00</u>
LIABILITIES:	
TOTAL LIABILITIES	<u>\$0.00</u>
NET WORTH:	<u><u>\$0.00</u></u>

\_\_\_\_\_  
Date

\_\_\_\_\_  
THURSTON HOWELL III

*I have read and understood this exhibit:*

\_\_\_\_\_  
Date

\_\_\_\_\_  
LOVEY HOWELL

**EXHIBIT C**

**LOVEY HOWELL**

<b>SEPARATE PROPERTY ASSETS:</b>	<b><u>Value</u></b>
<b>Pension Plans IRA's</b>	<b>\$0.00</b>
<b>Securities</b>	<b>\$0.00</b>
<b>Bonds</b>	<b>\$0.00</b>
<b>Notes Receivable</b>	<b>\$0.00</b>
<b>Household Furnishings</b>	<b>\$0.00</b>
<b>Motor Vehicles</b>	<b>\$0.00</b>
<b>Real Property</b>	<b>\$0.00</b>
<b>Miscellaneous</b>	<b>\$0.00</b>
<b>TOTAL SEPARATE PROPERTY ASSETS</b>	<b>\$0.00</b>



**EXHIBIT D****THURSTON HOWELL III**

<b>SEPARATE PROPERTY ASSETS:</b>	<b><u>Value</u></b>
<b>Pension Plans IRA's</b>	<b>\$0.00</b>
<b>Securities</b>	<b>\$0.00</b>
<b>Bonds</b>	<b>\$0.00</b>
<b>Notes Receivable</b>	<b>\$0.00</b>
<b>Household Furnishings</b>	<b>\$0.00</b>
<b>Motor Vehicles</b>	<b>\$0.00</b>
<b>Real Property</b>	<b>\$0.00</b>
<b>Miscellaneous</b>	<b>\$0.00</b>
<b>TOTAL SEPARATE PROPERTY ASSETS</b>	<b>\$0.00</b>

**CERTIFICATE OF LOVEY HOWELL’S COUNSEL**

I, David M. Repp of Dickinson, Mackaman, Tyler & Hagen, P.C., attorneys at law, do certify as follows:

1. I have represented LOVEY HOWELL in connection with the negotiation and execution of the foregoing Antenuptial Agreement (“the Agreement”).

2. As a part of that representation I advised Ms. Howell of her rights under the Agreement as well as those rights affected by it.

3. In my opinion Ms. Howell understood the provisions of the Agreement at the time she signed it, she reviewed and understood Mr. Howell III’s representations in his financial statement attached hereto, and in reliance upon those representations, she then believed that the Agreement was fair, reasonable and equitable.

4. In my opinion, Ms. Howell signed the Agreement in good faith, voluntarily and without any exertion of duress or undue influence.

Dated: \_\_\_\_\_, 2016.

\_\_\_\_\_  
David M. Repp

I have read the foregoing “Certificate” and agree with its statements.

Dated: \_\_\_\_\_, 2016.

\_\_\_\_\_  
LOVEY HOWELL

**CERTIFICATE OF THURSTON HOWELL III'S COUNSEL**

I, \_\_\_\_\_ of \_\_\_\_\_, attorneys at law, do certify as follows:

1. I have represented THURSTON HOWELL III in connection with the negotiation and execution of the foregoing Antenuptial Agreement ("the Agreement").

2. As a part of that representation I advised Mr. Howell III of his rights under the Agreement as well as those rights affected by it.

3. In my opinion Mr. Howell III understood the provisions of the Agreement at the time he signed it, he reviewed and understood Ms. Howell's representations in her financial statement attached hereto, and in reliance upon those representations, he then believed that the Agreement was fair, reasonable and equitable.

4. In my opinion, Mr. Howell III signed the Agreement in good faith, voluntarily and without any exertion of duress or undue influence.

Dated: \_\_\_\_\_, 2016. \_\_\_\_\_  
[name of attorney]

I have read the foregoing "Certificate" and agree with its statements.

Dated: \_\_\_\_\_, 2016. \_\_\_\_\_  
THURSTON HOWELL II